Heritage Legislation

IMPROVING STEWARDSHIP FOR HERITAGE RESOURCES OF NATIVE ORIGIN

Province of
British Columbia

Ministry of Municipal Affairs, Recreation and Culture
Hon. Lyall Hanson, Minister

VICTORIA, B.C.

BC
m537
H415
1991
v.1

91-04044/

Canadian Cataloguing in Publication Data

British Columbia. Ministry of Municipal Affairs, Recreation and Culture.
Heritage legislation

In folder.
Title from folder.
Contents: Heritage legislation, a guide to community heritage conservation — Heritage Legislation, improving stewardship for heritage resources of native origin — Heritage legislation, a draft bill.
ISBN 0-7726-1322-2

1. Historic sites — Government policy — British Columbia. 2. Historic sites — Law and legislation — British Columbia. 3. Indians of North America — British Columbia — Antiquities — Government policy. 4. Indians of North America — British Columbia — Antiquities — Law and legislation. 5. British Columbia — Antiquities — Government policy.
I. Title.

FC3812.B74 1991 354.7110085'9 C91-092136-9
F1087.8.B74 1991

HERITAGE LEGISLATION:
IMPROVING STEWARDSHIP FOR HERITAGE RESOURCES OF NATIVE ORIGIN

Throughout this province there can be found sites and artifacts documenting thousands of years of aboriginal settlement. British Columbia has long recognized a special responsibility for the conservation of this ancient heritage. The proposed legislation enables improved stewardship for pre-colonial heritage resources:

1. through strengthened statutory protection,
2. by enabling Native participation in the Province's heritage resource management processes, and
3. through formal recognition of Native descendants' rights to ownership of many of the ancient artifacts.

BACKGROUND:

British Columbia began protecting Native heritage sites long before the Province enabled protection for heritage buildings and historic sites. Legal protection for Native burial sites dates back to 1865; petroglyphs and pictographs, 1925; and automatic protection for archaeological sites began in 1960. By way of comparison, the first heritage designation for buildings was Vancouver's Gastown/Chinatown, in 1971.

International law places responsibility on governments to protect the world's archaeological resources. Over the past two decades, this Province has been a leader in the development of ways to minimize the loss or damage of archaeological sites due to land development. The current system is based upon the automatic heritage protection that is given to important types of archaeological sites under the current *Heritage Conservation Act*, and is called the Archaeological Impact Assessment Process.

The Archaeological Impact Assessment Process integrates archaeological site considerations into the Province's inter-ministry land-use and development planning processes. Costs of locating and assessing archaeological sites, redesigning proposals to avoid damage or loss of sites, and mitigation measures for site-loss that is unavoidable, are usually borne by proponents as a "user-pays" cost of land development. Most of the archaeological research that occurs in British Columbia is funded through this system, and many sites that would otherwise be inadvertently destroyed are discovered and preserved.

The Archaeological Impact Assessment Process works efficiently. It is not expensive to administer, it rarely delays development approvals, and the costs to proponents amount to only a small proportion of development costs (rarely more than 1/10 of 1%). For this reason, British Columbia's process has been copied by other provinces, and similar approaches are now in place across Canada.

In 1987, many groups and individuals, both Native and non-Native, made presentations to the **Project Pride Task Force** expressing concerns about limitations in the existing framework for protection and stewardship for this land's ancient heritage. A common concern was that the existing protection is not adequately enforced against vandals and "pothunters". Of more fundamental concern to the Native community is that the existing system is geared more towards protecting sites and objects as archaeological resources - sites and specimens for the scientific study of past cultures - rather than as the cultural legacy of a living people. Increasingly, the Native people in British Columbia are demanding stewardship responsibility for their heritage and culture.

PROPOSED LEGISLATIVE PROVISIONS

Automatic site protection

The proposed legislation broadens automatic legal protection to include all sites that contain materials, artifacts or features that are evidence of human occupation or use prior to 1858. If a site is of unknown origin, but may be pre-colonial, it is also protected. Automatic protection can also be extended to include more recent heritage burial sites and cemeteries. This protection applies whether a site is on public or private land, but only applies to lands under provincial government jurisdiction.

(See section 18)

Comprehensive site protection

The proposal eliminates "loopholes" in the protection for precolonial sites. The prohibitions are no longer limited to specific types of alterations, and all types of pre-1858 sites are now included in the protection. Claims of ignorance regarding the protection provisions cannot be used to protect those who illegally alter a site.

(See sections 4 and 18)

Heritage Designation

Besides the sites that are automatically protected under the Act, the Province can also protect selected sites and objects by heritage designation.

(See section 23)

Provincial heritage registry

All known protected sites and objects will be recorded in a Provincial Heritage Registry. The Registry is public information. Possible errors or omissions in the Registry do not invalidate the protection of a site or object. The Ministry is to be informed of any discoveries of previously-unknown sites that are found during the excavation or alteration of land.

(See sections 13 and 19)

Provincial heritage resource management

The proposed legislation continues to enable this Ministry to administer site protection within the context of the Province's impact assessment and land-use planning systems. Heritage protection is also integrated with the planning processes of other ministries (e.g., Forests and Crown Lands). Development proponents can continue to be required to undertake and pay for heritage impact assessment studies. If protected heritage properties would be affected by development, the minister or his delegated representative can negotiate appropriate terms to prevent or minimize damage or loss.

(See sections 2, 4, 12 and 20; consequential amendments will also be made to other Acts to support resource management integration.)

Archaeological research management

The proposed legislation will continue to require permits and reports for all archaeological excavations. It will also require permits for other field research looking for sites.

(See sections 19 and 20.)

Native participation and consultation

The specific format for native involvement in the impact assessment and resource management must be developed through consultation and negotiation with Native leaders and other affected parties. The administrative provisions in the legislation are flexible and could accommodate many possible formats of consultation and/or participation. The minister would be able to appoint whatever advisory, administrative or decision-making bodies are necessary or useful to implement a consultation or participation process.

(See sections 12, 14 and 36.)

Native human remains and grave goods

The proposed legislation includes strong provisions with regard to respectful treatment of Native human remains and grave goods. Any such items that are in the possession of the Crown, or held by an institution under a permit from the minister, are held in trust. Scientific research uses will be carefully considered in relationship to cultural values. Human remains and grave goods will be turned over upon request to a band, tribal council or other body that represents the descendants, as determined in consultation with representatives of the Native people of British Columbia.

(See section 28(5-7).)

Other "archaeological" artifacts

The proposed legislation includes provisions relating to the ownership of other ancient artifacts that are found in British Columbia. The Provincial Crown claims ownership for such objects, but its claim is explicitly subordinate to ownership by a "true owner". The proposed legislation makes special provision to nullify other non-descendants' ownership claims based only on possession, being the finder of such an artifact, or having it found on one's land. This opens opportunities for Native descendants to claim ownership as "true owners" under common law. It should be noted that these special provisions only apply to ancient objects that are found in British Columbia that were apparently lost, cached or abandoned before 1858.

(See section 28)

Resolving artifact ownership issues

Many situations are likely to arise where both the descendants and the Crown have reasonable claims to ownership. In general, under common law, the descendants' legal claim is likely to be stronger for items that can be presumed to have been lost or cached; the Crown's claim may be stronger for items that were thrown away by their former owners. The preferable means to resolve any disputes would be through discussion, consultation and negotiation based upon stewardship principles, not on the basis of legal ownership. The legislation gives the minister the authority, after

consultations with the representatives of the Native people of British Columbia, to recognize ownership or assign possession of any object to the representatives of the descendants. Where issues cannot be resolved through such discussions, representatives of the descendants would be able to apply to the courts for recognition of common law ownership.

(See sections 28 and 32)

Removal of artifacts from British Columbia

Objects from protected pre-colonial sites may not be transported out of the Province without the authorization of the minister or his delegated representative. This permission may be withheld if an ownership claim is made to the courts by the Crown or Native descendants, or if the object has been designated. Proposed new Federal legislation would reinforce this requirement with regard to inter-provincial movement of artifacts, and would prohibit the export of such artifacts from Canada.

(See section 30; also, see sections 14 and 28-31 of the proposed *Archaeological Heritage Protection Act (Canada)*, not included with this document.)

International trade in illegally-obtained artifacts

This new Act, in conjunction with existing federal legislation, aims to implement international conventions for suppressing the worldwide trade in illegally-obtained artifacts. Under the proposed legislation, anyone who offers to sell an archaeological artifact in this province must be able to prove that the artifact was legally removed from its site of origin, and, if applicable, that it was legally exported from its province or country of origin. Any person who does not have sufficient documentation to this effect would have to obtain a determination from the court that he or she is the legitimate owner of the object before it could be sold.

(See sections 29 and 32; also, see section 37 of the *Cultural Property Export and Import Act (Canada)*, not included with this document.)

Financial support for Native stewardship

Although Provincial financial support for Native stewardship is primarily provided by the Ministry of Native Affairs through the First Peoples' Heritage, Language and Culture Council, the proposed legislation continues to enable the British Columbia Heritage Trust and the Ministry of Municipal Affairs, Recreation and Culture to support archaeological research and conservation projects by bands and other Native organizations.

(See sections 9 and 15; also, see the *First Peoples' Heritage, Language and Culture Act*, not included with this document.)

Injunctions, remedies and penalties

This proposed legislation includes strong provisions for deterrence and enforcement. Persons can be authorized by the minister to enter onto private land to locate and assess protected sites and objects. Injunctions can be obtained to prevent anticipated illegal actions. If property has been illegally altered, the minister may apply to the Supreme Court for a civil remedy, such as restoration or compensatory conservation work, or he may prosecute the violation as an offence. Maximum penalties for serious offenses could include a fine of $50,000 ($1 million for a corporate offender) and up to two years imprisonment.

(See sections 21, 40, 41 and 42.)

The specific legal language that is proposed for the new Act is in the document Heritage Legislation: A Draft Bill. Most of the featured discussd above are found in Divisions 2 and 4 of Part 3 of the draft Act. The proposed legislation also contains general features that apply to all types of heritage property. Many of these could be useful for conservation of heritage resources of Native origin.

This proposed legislation would not, in itself, establish appropriate stewardship for this province's ancient heritage. However, it would provide a framework within which appropriate policies and programs could be established, and new, more positive working relationships could evolve.

Heritage Legislation

A DRAFT BILL

Province of
British Columbia

Ministry of Municipal Affairs, Recreation and Culture
Hon. Lyall Hanson, Minister

LEGISLATIVE LIBRARY
VICTORIA, B.C.

Canadian Cataloguing in Publication Data

British Columbia. Ministry of Municipal Affairs, Recreation and Culture.
Heritage legislation

In folder.
Title from folder.
Contents: Heritage legislation, a guide to community heritage conservation — Heritage Legislation, improving stewardship for heritage resources of native origin — Heritage legislation, a draft bill.
ISBN 0-7726-1322-2

1. Historic sites — Government policy — British Columbia. 2. Historic sites — Law and legislation — British Columbia. 3. Indians of North America — British Columbia — Antiquities — Government policy. 4. Indians of North America — British Columbia — Antiquities — Law and legislation. 5. British Columbia — Antiquities — Government policy.
I. Title.

FC3812.B74 1991 354.7110085'9 C91-092136-9
F1087.8.B74 1991

MINISTER OF MUNICIPAL AFFAIRS,
RECREATION AND CULTURE.

DRAFT HERITAGE CONSERVATION ACT

Contents

Section

PART 1

INTERPRETATION

1. Interpretation
2. Purpose
3. Binding on Crown
4. Conflicting legislation

PART 2

BRITISH COLUMBIA HERITAGE TRUST

5. Heritage Trust continued
6. Objects of Heritage Trust
7. Directors
8. Employees and consultants
9. Powers of Heritage Trust
10. Heritage Trust Fund
11 Financial administration

PART 3

PROVINCIAL HERITAGE CONSERVATION

Division 1 – Provincial Stewardship

12. Provincial heritage policies
13. Provincial heritage registry
14 Advisory and other bodies
15. Promotion of heritage value
16. Acquisition of property
17. Provincial historic attractions

Division 2 – Provincial Resource Management

18. Heritage protection
19. Finds during excavation
20. Heritage inspection and investigation
21. Entry to land or premises
22. Temporary protection

Division 3 – Heritage Designation

23. Heritage designation

24. Designation procedure

Division 4 – Alteration of Heritage Property

25. Permit to alter
26. Preservation intervention
27. Posting notice on protected property

PART 4

OWNERSHIP OF HERITAGE PROPERTY

28. Artifacts ownership
29. Illegal possession or sale of artifacts
30. Removal of artifacts from British Columbia
31. Unclaimed objects in heritage collections
32. Determination of artifact ownership
33. Variation of directions
34. Expropriation

PART 5

GENERAL AND TRANSITIONAL PROVISIONS

35. No compensation
36. Delegation
37. Service of documents
38. Notice to registrar of land titles
39. Immunities
40. Civil remedies
41. Injunction
42. Offences and penalties
43. Regulations
44. Transitional
45. Repeal
46 to 85. Consequential Amendments
86. Commencement

PART 1

INTERPRETATION

Interpretation

1. In this Act

"alter" means to change in any manner, and without limitation, includes

(a) the making of an improvement, as defined in the *Builders Lien Act*, and

(b) any action that derogates from the heritage value of heritage property;

"band" means a band as defined in the *Indian Self Government Enabling Act;*

"board" means the board of directors of the Heritage Trust referred to in section 7,

"conservation" includes an activity undertaken to protect, preserve or enhance the heritage value of heritage property;

"former Act" means

(a) the *Heritage Conservation Act*, R.S.B.C. 1979, c. 165,

(b) the *Archaeological and Historical Sites Protection Act*, S.B.C. 1972, c. 4,

(c) the *Archaeological and Historic Sites Protection Act*, R.S.B.C. 1960, c. 15, or

(d) the *Historic Objects Preservation Act*, R.S.B.C. 1948, c. 145;

"fund" means the British Columbia Heritage Trust Fund referred to in section 10;

"heritage conservation organization" means the Heritage Trust or a non-profit society, corporation or institution that has as one of its principal purposes the conservation of heritage property;

"heritage inspection" means, with respect to property, physical examination and research necessary

(a) to identify the heritage value of the property or a portion of it, and

(b) if the property or a portion of it has heritage value, to establish

(i) the need for protection and conservation, or

(ii) conformance with heritage protection requirements;

"heritage investigation" means the systematic study of heritage property to reveal its history;

"heritage property" means property that is protected under this Act or that has sufficient heritage value in the opinion of the government or a local government to justify its conservation;

"heritage registry" means a registry established under section 13;

"Heritage Trust" means the British Columbia Heritage Trust continued under section 5 (1);

"heritage value" means scientific, educational, aesthetic or cultural worth or usefulness;

"land" includes trees, natural features and improvements, as defined in section 1 of the *Builders Lien Act*, and land covered by water;

"local government" means the council of a municipality or the board of a regional district;

"preservation" means action taken to protect the form, integrity and fabric of heritage property and includes stabilization and maintenance;

"property" means land or an object or both land and an object and includes an interest in land or an object.

Purpose

2. The purposes of this Act are

(a) to provide for the conservation of Provincial and community heritage property,

(b) to support research and investigation of British Columbia's heritage, and

(c) to promote public awareness, understanding and appreciation of British Columbia's heritage.

Binding on Crown

3. Notwithstanding section 14 (2) of the *Interpretation Act*, this Act and the regulations and orders made under it are binding on the Crown.

Conflicting legislation

4. If, with respect to any matter affecting the conservation of a heritage property protected under section 17, 18, 20, 22, 23 or 26, there is a conflict between this Act, or a regulation or order made under this Act, and any other Act, regulation or order enacted before or after the coming into force of this Act, this Act prevails.

PART 2

BRITISH COLUMBIA HERITAGE TRUST

Heritage Trust continued

5. (1) The British Columbia Heritage Trust continued under the *Heritage Conservation Act*, R.S.B.C. 1979, c. 165, is continued as a corporation under this Act.

(2) The Heritage Trust is for all purposes an agent of the Crown and the powers of the Heritage Trust may be exercised only as an agent of the Crown.

(3) Subject to the other provisions of this Part, the Heritage Trust has the power and capacity of a natural person of full capacity.

(4) The *Company Act* does not apply to the Heritage Trust but the Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Company Act* apply to the Heritage Trust.

(5) Property vested in the Heritage Trust is exempt from taxation, levies and all other charges, except insofar as the Crown is liable.

Objects of Heritage Trust

6. The objects of the Heritage Trust are

(a) to conserve and support the conservation of Provincial and community heritage property,

(b) to gain further knowledge about British Columbia's heritage,

(c) to increase public awareness, understanding and appreciation of British Columbia's heritage, and

(d) to undertake such other activities related to British Columbia's heritage as the minister may authorize.

Directors

7. (1) The Lieutenant Governor in Council shall appoint a board of directors of the Heritage Trust.

(2) The Lieutenant Governor in Council shall designate one of the directors as chairperson and one or more of the directors as vice chairperson of the board.

(3) The directors shall be paid from the fund reasonable and necessary travelling and incidental expenses incurred in the discharge of their duties under this Act, and may be paid remuneration for services from the fund in an amount determined by the board and approved by the Lieutenant Governor in Council.

(4) The board may

(a) determine its own procedure and provide for the regulation and conduct of its meetings,

(b) delegate any of the powers, functions and duties of the Heritage Trust to a committee of directors, to an officer or employee of the Heritage Trust or to any other person, and

(c) establish rules or policies governing the powers, functions or duties delegated under paragraph (b).

Employees and consultants

8. (1) The board may appoint officers and employees of the Heritage Trust as it considers necessary and shall determine the remuneration and other terms and conditions of employment of the officers and employees.

(2) The *Public Service Act* and the *Public Service Labour Relations Act* do not apply to the Heritage Trust or to a director, officer or employee of the Heritage Trust, but the Lieutenant Governor in Council may, by

order, direct that one or more provisions of those enactments apply to the Heritage Trust.

(3) The *Public Service Benefit Plan Act* and the *Pension (Public Service) Act* apply to the officers and employees of the Heritage Trust.

(4) The minister may authorize employees of the public service to provide services to the Heritage Trust, with or without compensation from the Heritage Trust.

Powers of Heritage Trust

9. (1) For the purpose of carrying out its objects the Heritage Trust may

(a) acquire property and, notwithstanding the *Land Act*, manage, conserve and develop the property,

(b) subject to a trust or agreement under which a property was obtained by the Heritage Trust, sell, rent, lease or assign property to any person or otherwise dispose of property and property rights, and execute instruments required to effect that sale, rental, lease, assignment or disposal,

(c) solicit and accept property and money for payment into the fund by donation, public subscription, bequest, devise or otherwise and may agree to terms or conditions applicable to the disposition of the property or money,

(d) enter into an agreement, including an agreement for the acquisition of a covenant or an easement, with any person or organization, the government of Canada or of a province, a local government or a band,

(e) assist in or undertake research, study, exhibits or publication concerning its objects,

(f) charge fees for any service that it provides including fees for the use of or admission to any of the facilities that it operates,

(g) provide financial assistance, services, advice or other support to persons or organizations carrying on activities consistent with the objects of the Heritage Trust,

(h) subject to terms and conditions it may choose to apply, lend money from the trust fund or guarantee loans made by a financial institution for the acquisition, management, conservation or development of heritage property by any person or organization, and

(i) do such other things as the Lieutenant Governor in Council may authorize.

(2) Subject to the approval of the Lieutenant Governor in Council, the Heritage Trust may, for the purpose of engaging in a commercial, industrial or business undertaking,

(a) incorporate a corporation,

(b) acquire shares in a corporation, or

(c) enter into a partnership or joint venture.

(3) Subject to the approval of the Lieutenant Governor in Council, the Heritage Trust may borrow money in accordance with regulations made under section 59 of the *Financial Administration Act*.

Heritage Trust Fund

10. (1) The fund maintained under the *Heritage Conservation Act*, R.S.B.C. 1979, c. 165, is continued as the British Columbia Heritage Trust Fund.

(2) The Heritage Trust shall pay any money received by it into the fund.

(3) The Heritage Trust may pay money out of the fund for

(a) remuneration, expenses and compensation referred to in sections 7 and 8,

(b) operation and administration expenses of the Heritage Trust,

(c) investments referred to in subsection (4), and

(d) any other expenses incurred in the exercise of its powers.

(4) Money of the fund may be invested in

(a) the acquisition, management, conservation and development of property under section 9 (1) (a),

(b) loans made under section 9 (1) (h), and

(c) investments approved by the Minister of Finance and Corporate Relations.

Financial administration

11. (1) The Heritage Trust shall establish and maintain an accounting system satisfactory to the Minister of Finance and Corporate Relations, and shall render detailed accounts of its revenues and expenditures as required by that minister.

(2) The Minister of Finance and Corporate Relations may direct the Comptroller General of the Province to examine and report on any or all of the financial and accounting operations of the Heritage Trust.

(3) The accounts of the Heritage Trust shall, at least once every year, be audited and reported on by an auditor appointed by the board.

(4) The Heritage Trust shall annually, within 120 days of the end of its fiscal year, submit to the minister

(a) a report of the Heritage Trust and its operations for the preceding fiscal year,

(b) a financial statement showing the assets and liabilities of the Heritage Trust at the end of the preceding fiscal year, and

(c) the annual report of the auditor referred to in subsection (3).

(5) The report and financial statement referred to in subsection (4) shall be laid before the Legislative Assembly by the minister during the first session in the year following the end of the fiscal year for which the report and financial statement are made.

(6) The *Financial Information Act* applies to the Heritage Trust.

(7) The fiscal year of the Heritage Trust ends on March 31.

PART 3

PROVINCIAL HERITAGE CONSERVATION

Division 1 – Provincial Stewardship

Provincial heritage policies

12. The minister shall, with the approval of the Lieutenant Governor in Council, establish policies and standards for the identification, conservation and management of heritage property owned by the Crown.

Provincial heritage registry

13. (1) The minister shall establish and maintain one or more Provincial heritage registries for the registration of heritage property protected under this Act, the *Municipal Act* or *the Vancouver Charter*.

(2) Information in a Provincial heritage registry shall be open to inspection by any person during business hours, subject to reasonable conditions the minister may impose.

(3) Protection of a heritage property is not affected by an error or omission in a Provincial heritage registry or by a failure to register property in a Provincial heritage registry.

Advisory and other bodies

14. (1) The minister may establish one or more bodies to act in an advisory or administrative capacity in matters relating to this Act or the conservation of heritage resources.

(2) The minister may appoint or provide for the manner of appointment of the members of bodies established under this section and may set the terms of reference for those bodies.

(3) The members of any body established or authorized under this section shall be paid reasonable and necessary travelling and incidental expenses incurred in the discharge of their duties under this Act, and may be paid remuneration for services in an amount determined by the Lieutenant Governor in Council.

Promotion of heritage value

15. (1) The minister may enter into agreements to promote, support and subsidize activities in relation to heritage undertaken by any person or organization, the government of Canada or of a province, a local government or a band.

(2) The minister may acknowledge the heritage value of any heritage property by issuing a certificate or by erecting a commemorative plaque or marker.

(3) No person shall alter or remove a commemorative plaque or marker erected under subsection (2) unless a permit is issued under section 25 to authorize the alteration or removal.

Acquisition of property

16. For the purposes of this Act the minister may

(a) acquire property in the name of the Crown,

(b) notwithstanding the *Land Act*, manage, conserve and develop property,

(c) dispose of property on any terms and conditions the minister considers appropriate, and

(d) enter into an agreement, including an agreement for the acquisition of a covenant or an easement, with any person or organization, the government of Canada or of a province, a local government or a band.

Provincial historic attractions

17. (1) The historic sites described in the Schedule, and the collections of accessioned artifacts associated with those historic sites, are hereby established as Provincial historic attractions with the names indicated.

(2) The Lieutenant Governor in Council may, by regulation, add a Provincial historic attraction to the Schedule.

(3) Except as authorized by an order or a permit issued under section 20 or 25, no person shall alter a Provincial historic attraction.

Division 2 – Provincial Resource Management

Heritage protection

18. (1) Except as authorized by an order or permit issued under section 20 or 25, no person shall

(a) alter a site that contains materials, artifacts or features of human origin or has other physical characteristics that are evidence or may be evidence of human occupation or use before November 19, 1858,

(b) alter a site that is in a class for which identification standards have been established in the regulations under subsection (2), or

(c) alter, move or remove anything from a site referred to in paragraph (a) or (b).

(2) The Lieutenant Governor in Council may make regulations

(a) establishing standards for the identification of classes of sites of the following types for the purpose of subsection (1) (b):

(i) palaeontological or geological sites;

(ii) heritage shipwrecks or aircraft wrecks;

(iii) commemorative monuments;

(iv) heritage cemeteries and burial sites,

(b) defining the extent of classes of sites protected under subsection (1), and

(c) identifying activities that may derogate from the heritage value of a site or class of sites protected under this Act.

(3) No person shall engage in any activity identified in a regulation under subsection (2) (c) on an affected site except as authorized by an order or permit issued under section 20 or 25.

(4) The minister may

(a) define the extent of individual sites protected under subsection (1), and

(b) exempt sites from subsection (1) on any terms and conditions the minister considers appropriate if the minister considers that the site lacks sufficient heritage value to justify its conservation.

Finds during excavation

19. (1) Except as authorized by an order or permit issued under section 20 or 25, if a person in the process of excavating or otherwise altering land unearths or otherwise discovers a feature, artifact, material or other evidence that the land may be a site protected under section 18 (1), that person shall immediately cease the excavation or other alteration of the land containing the evidence and shall notify the minister in a manner satisfactory to the minister.

(2) If construction or other work is delayed as a consequence of a discovery referred to in subsection (1), the minister shall, within 72 hours after receiving the notification,

(a) determine that the requirements of section 18 (1) do not apply or issue an exemption under section 18 (4) (b),

(b) order or permit a heritage inspection or heritage investigation under section 20, or

(c) issue a permit under section 25.

Heritage inspection and investigation

20. (1) The minister may authorize a heritage inspection or heritage investigation of any property

(a) by permit, or

(b) by order, if the minister considers that the property may have heritage value or that land may include heritage property, and

(i) the property may be subject to alteration by natural or human causes,

(ii) the property may be subject to alienation from Crown ownership,

(iii) the land may be subject to subdivision,

(iv) the land may contain objects owned by the Crown or by native descendents under section 28, or

(v) an object protected under this Act may be subject to removal from British Columbia.

(2) A heritage inspection or heritage investigation shall be carried out in an expeditious manner and the permit or order authorizing the heritage inspection or heritage investigation

(a) shall specify how long the order or permit is to remain in effect,

(b) may require the owner to preserve any property until the heritage inspection or heritage investigation is completed,

(c) may include terms and conditions the minister considers appropriate, and

(d) may authorize a person carrying out the inspection or investigation to remove or alter

(i) objects that are deemed to be owned by the Crown under section 28 (2) or may be owned by native descendents,

(ii) other heritage property, with the permission of its owner, or

(iii) sample materials needed for the heritage inspection or heritage investigation.

(3) If an order for a heritage inspection made under subsection (1) (b) relates to

(a) alienation of Crown owned property,

(b) a public work authorized to be undertaken by or under an Act,

(c) the subdivision of land, or

(d) changes in use or development of land,

the minister may require the person purchasing, subdividing, developing or using the property to undertake or pay for the heritage inspection.

(4) No person shall excavate or otherwise alter land for the purpose of archaeological research or searching for artifacts unless a permit or order has been issued under subsection (1) with respect to the land.

(5) Except as authorized by an order under this section or by a permit issued under section 25, no person shall alter property or remove an object from British Columbia if an order under subsection (1) (b) is in effect with respect to the property or object.

Entry to land or premises

21. (1) An order under section 20 (1) (b) authorizes a person conducting a heritage inspection or heritage investigation to enter land or premises identified in the order, at any reasonable time and on presentation of proof of his or her authorization, for the purposes of the heritage inspection or heritage investigation.

(2) Nothing in this section or section 20 authorizes entry into a private living accommodation without the permission of the occupant or owner unless a warrant is issued under subsection (3).

(3) A justice may by warrant authorize a person to enter land or premises and carry out a heritage inspection or heritage investigation if it is shown to the satisfaction of the justice on sworn information in

writing that an order has been issued under section 20 (1) (b) and there are reasonable grounds to believe that

(a) a warrant is required under subsection (2),

(b) admission has been refused or refusal is anticipated,

(c) an emergency exists,

(d) the occupier is temporarily absent,

(e) the land or premises are unoccupied, or

(f) an application for admission to the land or premises would defeat the object of the entry.

(4) A warrant issued under this section continues in force until the purpose for which the entry is required has been satisfied.

Temporary protection

22. (1) If the minister considers that property has or may have heritage value and is likely to be altered for any reason, the minister may, subject to terms and conditions he or she considers appropriate, issue to a person or class of persons a stop work order prohibiting any alteration of the property for a period of up to 120 days.

(2) Except as authorized by an order or permit issued under section 20 or 25, no person shall alter property that is subject to an order under subsection (1).

(3) No more than one order under subsection (1) shall be issued with respect to a property.

Division 3 – Heritage Designation

Heritage designation

23. (1) Subject to section 24, the Lieutenant Governor in Council may, by order, on terms and conditions he or she considers appropriate, designate property in whole or in part as protected under this section, if the Lieutenant Governor in Council considers that

(a) the property has heritage value, or

(b) the property does not have heritage value but is necessary for the conservation of one or more heritage properties designated under paragraph (a) or protected under section 18 (1).

(2) A heritage designation made under this section may apply to more than one separate parcel of land or more than one object, including property under diverse ownership.

(3) Except as authorized by the terms and conditions of a designation made under subsection (1) or by an order or permit issued under

section 20 or 25, no person shall alter property designated as protected under this section or with respect to which a notice has been given under section 24 (1).

(4) If a designation of property under this section results in a reduction in the market value of the property, the owner of the property may apply to the minister by registered mail for compensation for that reduction in value.

(5) The Crown shall pay compensation to an owner who applies in accordance with subsection (4) in an amount that the minister and the owner agree on or, failing agreement, in an amount determined by binding arbitration by a single arbitrator in accordance with the *Commercial Arbitration Act*.

(6) If the minister and owner are unable to agree on who should be appointed as the arbitrator, they shall each appoint an arbitrator who shall in turn appoint a 3rd arbitrator to act as chairperson.

(7) The arbitrator or arbitrators, in determining the amount of compensation to which the owner may be entitled, shall consider eligibility for financial and other support for conservation of the heritage property that is available to the owner of the property because of the designation of the heritage property under this section.

(8) Subsections (4) to (7) do not apply with respect to property that was protected under section 18 of this Act or section 741.92 of the *Municipal Act* immediately before it was designated as protected under this section.

Designation procedure

24. (1) Before a designation is made under section 23, the minister shall give written notice of the proposed designation,

(a) in the case of land,

(i) to all persons who, according to the records of the land title office, have a registered interest in land that would be affected by the designation, and

(ii) to the local government of the municipality or regional district in which the land is situated,

(b) in the case of objects,

(i) to the person who has possession of the object, and

(ii) to the owner of the object if the person referred to in subparagraph (i) is known not to be the owner, and

(c) to any other prescribed person.

(2) A person served with notice under subsection (1) may, within 30 days after receipt of the notice, serve the minister with a notice of objection to the proposed designation.

(3) Upon receipt of the notice of objection, the minister shall review the objection and may amend or cancel the proposed designation as he or she considers appropriate.

(4) Before the making of a designation, the minister shall give to the Lieutenant Governor in Council a copy of

(a) the notice of the proposed designation, and

(b) where applicable, any notice of objection, the results of any review of an objection, and the terms and conditions of any amendment to the proposed designation.

(5) The minister shall give written notice to the persons entitled to notice under subsection (1) that a designation has or has not been made within 30 days after

(a) the Lieutenant Governor in Council makes a designation,

(b) the minister cancels a proposed designation, or

(c) the Lieutenant Governor in Council elects not to designate.

(6) Within 30 days after the making of a designation the minister shall

(a) in the case of land, register a certificate of the designation in the land title office in the manner established by the director of land titles,

(b) in the case of personal property, register a certificate of the designation in the personal property registry in the prescribed manner, and

(c) cause a description of the designated property to be entered in the heritage registry.

(7) On receipt of a certificate under subsection (6) (a), the registrar shall register it in the same manner as a charge is registered and shall endorse the Crown as the registered owner of the charge.

(8) No designation is invalid for inadvertent and minor non-compliance with this section.

Division 4 – Alteration of Heritage Property

Permit to alter

25. (1) The minister may, on terms and conditions he or she considers appropriate, issue a permit to alter property protected under this Act.

(2) The minister may

(a) refuse to issue a permit under subsection (1) for an action that would derogate the heritage value of a heritage property, or

(b) amend, suspend or cancel a permit issued under subsection (1).

(3) Notwithstanding any other enactment, a permit issued under subsection (1) may specify the siting, dimensions, form, exterior design and finish of new construction or renovations to a building or structure protected under this Act.

Preservation intervention

26. (1) If the minister considers that property protected under section 18 (1) or 23 is subject to damage or deterioration, the minister may order the owner, on terms and conditions and to specifications that the minister considers appropriate, to preserve the property at the expense of the Crown.

(2) If the minister considers that property protected under section 18 (1) or 23 is subject to damage or deterioration and is being unreasonably neglected, the minister may order the owner, on terms and conditions and to specifications that the minister considers appropriate, to preserve the property at the expense of the owner or at the expense of the owner and the Crown on a cost sharing basis.

Posting notice on protected property

27. (1) The minister may post one or more notices on or near property protected under this Act.

(2) Before entering land to post a notice, the minister shall make reasonable efforts to notify the occupant of the land, if any.

(3) The notice shall state that the property is protected under this Act and set out the procedure for reporting violations under this Act.

(4) Except as authorized by the minister, no person shall alter or remove a notice posted under the authority of this section.

PART 4

OWNERSHIP OF HERITAGE PROPERTY

Artifacts ownership

28. (1) In this section "former Act" includes *The Indian Graves Ordinance, 1867* in addition to the Acts listed in the definition of "former Act" in section 1.

(2) Subject to subsections (4) and (5), an object is deemed to be owned by the Crown if the object is

(a) found in or on land protected under section 18 (1) (a) and the minister considers that the object was deposited in or on that land prior to November 11, 1858,

(b) a palaeontological or geological specimen found at a site protected under section 18 (1) (b) or designated as protected under section 23,

(c) a wreck, as defined in section 2 of the *Canada Shipping Act* (Canada), that is or is part of a heritage shipwreck protected under section 18 (1) (b) or designated as protected under section 23 ,

(d) all or part of an aircraft wreck protected under section 18 (b) or designated as protected under section 23, or

(e) illegally removed, before or after this section comes into force, from heritage property

(i) protected under this Act or a former Act, or

(ii) owned by the Crown.

(3) A person or organization claiming to be the true owner of an object that is deemed to be owned by the Crown under subsection (2) may apply to the Supreme Court for a determination under section 32.

(4) Subsection (2) does not apply if some other person or organization is determined by the Supreme Court to be the owner of the object.

(5) The inalienable and imprescriptable ownership of native human remains and grave goods vests in and shall be deemed always to have vested in the native people of British Columbia and, in particular, vests in

(a) where the identity of the deceased person is known, the next of kin of that person as determined under the *Estate Administration Act*, or

(b) where the identity of the deceased person is not known or next of kin cannot be identified, the band, tribal council or other native organization that represents the descendents of the deceased person.

(6) Native human remains and grave goods that are in the possession of the Crown or an agent of the Crown shall be held in trust for the next of kin of the deceased person or the band, tribal council or other native organization that represents the descendents of the deceased person.

(7) A band, tribal council or other native organization may apply to the minister for an assignment of possession of any object referred to in subsection (2) (a) or (e), with regard to heritage property created or used by their ancestors and the application shall not be considered to be an acknowledgement of the ownership of the heritage property by the Crown.

(8) Where an application is made under subsection (7), the minister may, subject to such consultations with representatives of the native people of British Columbia and to such terms and conditions as the minister considers necessary or appropriate,

(a) assign possession of the heritage property to the applicant,

(b) assign possession of the heritage property to such other band, tribal council or native organization that, in the opinion of the minister, has a better claim to being the true owner of the heritage property or the representative of the descendents,

(c) assign possession of the heritage property to the Royal British Columbia Museum or to another institution that, acting as an agent for the Crown, will fulfil the Crown's stewardship responsibility with respect to the heritage property,

(d) return the object to the site where it was found, or retain it at that site, or

(e) refer the application to the Supreme Court for a determination under section 32.

(9) No sale, grant or other disposition of land belonging to the Crown conveys ownership in an object described in subsection (2) or (5) that is found in or on that land, whether the sale, grant or disposition is made before or after this section comes into force, unless the terms of the sale, grant or other disposition expressly state that title to the object is conveyed.

(10) No person is the owner of an object described in subsection (2) or (5) by reason of

(a) being the finder of the object,

(b) being the owner of the land within or upon which the object is found except as provided in subsection (9),

(c) acquiring the object, before or after this section comes into force and notwithstanding the *Sale of Goods Act*, from a person who is not the true owner, or

(d) the expiration of a limitation period under the *Limitation Act*.

Illegal possession or sale of artifacts

29. (1) Except as authorized under this Act, no person shall be in possession of an object that was removed from heritage property in contravention of this Act or a former Act.

(2) No person shall sell or exchange, offer to sell or exchange, or cause or aid another person to sell or exchange

(a) an object described in section 28 (2) or (5),

(b) an object that is protected as an historic, archaeological or other heritage object by a province or by Canada, or

(c) an object that is foreign cultural property as defined in the *Cultural Property Export and Import Act* (Canada)

unless

(d) the person can prove that

(i) the vendor is the true owner of the object,

(ii) the object was legally removed from its original site, and

(iii) if applicable, the object was legally exported from its province, state or country of origin,

(e) the vendor applies for and receives an order from the Supreme Court under section 32, or

(f) the object is donated, sold or otherwise conveyed to

(i) the Royal British Columbia Museum,

(ii) a heritage conservation organization that has been authorized by the minister for the purposes of this section, or

(iii) a band, tribal council or other native heritage organization, with respect to an object that was or may have been created or used by the ancestors of native people represented by them.

(3) If a heritage conservation organization or a band, tribal council or other native organization acquires an object under subsection (2) (f), it shall

(a) apply to the minister for an assignment of possession under section 28 (8),

(b) apply to the Supreme Court for an order under section 32,

(c) in the case of an object described in subsection (2) (b), notify the minister responsible for heritage protection in the province of origin or probable origin, or the minister responsible for the *Archaeological Heritage Protection Act* (Canada), or

(d) in the case of an object described in subsection (2) (c), notify the reciprocating state of origin or probable origin or the minister responsible for the *Cultural Property Export and Import Act* (Canada).

Removal of artifacts from British Columbia

30. (1) Notwithstanding that a person is or may be the true owner of the object, no person shall, without the written authorization of the minister, remove or attempt to remove from British Columbia an object referred to in section 28 (2) or (5) or otherwise protected under this Act.

(2) The minister may only withhold an authorization under subsection (1) if

(a) the object is designated under section 23, or

(b) the minister considers that the object is owned by the Crown or by descendents of the native people of British Columbia.

(3) An authorization under subsection (1) shall be deemed to be given after 60 days from the date on which the person applies for the authorization unless the minister or, where applicable, a band, tribal council or native organization applies to the Supreme Court for an order of ownership under section 32.

Unclaimed objects in heritage collections

31. A heritage conservation organization that has possession of an object that it does not own or may not own may apply to the Supreme Court for an order under section 32 if

(a) a reasonable attempt has been made to locate the owner of the object and the owner cannot be located, and

(i) a period of 25 years or more has passed since the making of a written agreement with the owner of the object for custody of the object, or

(ii) a period of 10 years or more has passed since the making of an oral agreement with the owner of the object for custody of the object, and there is no known written custody agreement,

(b) a period of 2 years or more has passed after the museum, archives, art gallery or other heritage organization gave notice to the owner of the object of termination of a custody agreement,

(c) the owner of the object cannot be identified or the circumstances of the acquisition of the object are not known, or

(d) the object was acquired from a person who may not have been the true owner.

Determination of artifact ownership

32. (1) Where an application is made under this Division, the court may make an order vesting possession or ownership in whomever the court considers to be

(a) the true owner of the heritage property, or

(b) the most appropriate owner in consideration of the heritage value of the heritage property.

(2) An order under subsection (1) may be subject to any terms or conditions the court considers appropriate in consideration of the heritage value of the object.

(3) Prior to making a determination under subsection (1) the court shall satisfy itself that

(a) a reasonable attempt has been made to notify any party who may be the true owner of the object, or otherwise have an interest in the action, and

(b) all persons that the court considers to have an interest in the action have been given a reasonable opportunity to be heard.

(4) Without limiting the generality of subsection (2), if a person or organization that the court determines is not the true owner or the most appropriate owner establishes to the satisfaction of the court that the person or organization

(a) is a bona fide purchaser for value of the property, or

(b) except for section 28, would have valid title to the object,

the court may order compensation to be paid by the person in whom possession vests under subsection (1) in an amount the court considers appropriate.

(5) Where an assignment of ownership is made under this section, no person or organization has any further claim to ownership of the object nor to compensation.

(6) No application for an order vesting possession may be made for an object with respect to which an order has already been made under this section.

Variation of directions

33. (1) The minister or a heritage conservation organization authorized by the minister to make an application under this section may apply to the Supreme Court for an order varying directions, terms or trusts relating to donated heritage property.

(2) The court may make an order under this section if it considers that the variation of the directions, terms or trusts will better serve the intent of the person who donated the property and the best interests of the Province or heritage conservation organization.

(3) Sections 88 and 89 of the *Trustee Act* apply to the application referred to in subsection (1).

Expropriation

34. (1) The minister may expropriate property that, in the opinion of the minister,

(a) is heritage property, or

(b) is necessary to the conservation of one or more heritage properties.

(2) The *Expropriation Act* applies to land that is expropriated under subsection (1).

(3) If an object is expropriated under subsection (1), the minister shall

(a) at the personal property registry established under the *Personal Property Security Act*, register a vesting notice in a form satisfactory to the registrar of the personal property registry containing a description of the object sufficient to identify it, and

(b) pay compensation to the owner of the expropriated object in an amount agreed on or determined under subsection (6).

(4) Notwithstanding any other Act, on the filing of the vesting notice under subsection (3) (a) the expropriated object vests in the Crown free and clear of all encumbrances.

(5) After the object vests under subsection (4), the minister shall serve on the owner of the object a notice containing a description of the object sufficient to identify it, together with a declaration of readiness to pay compensation.

(6) If the minister and an owner fail to agree on the amount of compensation payable under this section, the amount of compensation shall be determined by the Expropriation Compensation Board established under the *Expropriation Act*.

PART 5

GENERAL AND TRANSITIONAL PROVISIONS

No compensation

35. No compensation is payable to a person for any loss, damage or reduction in the value of property that results from the operation of this Act or the

exercise in good faith of any power under this Act except as provided in sections 23, 32 and 34.

Delegation

36. (1) The minister may, in writing and subject to such terms and conditions as the minister may specify, delegate any of the minister's powers, duties or functions under this Act to any person or to a body established under section 14.

(2) Subsection (1) does not apply to the minister's power under this Act to enact a regulation or make an order.

Service of documents

37. (1) In this Act, unless the Act or the regulations otherwise provide, a notice, order or other document is sufficiently served if

(a) it is served personally on a person,

(b) it is sent by registered mail to a person at his or her actual or last known address, or

(c) subject to subsection (2), it is published in a newspaper.

(2) Where a person cannot be served personally and the person's actual or last known address cannot be determined after reasonable steps for the purpose have been taken, a notice, order or other document may be served by publishing it in 2 issues, at least one week apart, of a newspaper having general circulation in the place where the person to be served

(a) was last known to reside or carry on business according to the records or other information available to the person serving the notice, order or other document, or

(b) has land, if the notice, order or other document relates to the land of the person to be served or is given in proceedings that relate to that land.

(3) A notice, order or other document sent by registered mail is deemed to be given on the earlier of

(a) the date the addressee actually receives the notice, order or other document, or

(b) except when postal services are not functioning, the expiry of 10 days after the date of registration.

Notice to registrar of land titles

38. (1) The minister may, with respect to land for which a permit or order is issued under section 20, 22 or 25, or with respect to a property determined by the minister to be protected under section 18(1), file a written notice in the land title office.

(2) Upon revocation or expiry of an order or permit for which notification was sent to the land title office, the minister shall notify the land title office in a manner satisfactory to the registrar and the registrar shall cancel the notice and the endorsement in the register.

(3) The protection of property under this Act is not affected by

(a) an omission or incorrect information in a notice to the land title office or an entry in the land register, or

(b) a failure to file a notification.

(4) Notwithstanding subsection (1), the Attorney General, the registrar and the Assurance Fund established under the *Land Title Act* are not liable for any delay, error or omission arising out of the filing of a notice and the endorsement of a note of it in the land title office.

Immunities

39. (1) No action for damages because of anything done or omitted to be done in good faith in the performance or intended performance of a duty or in the exercise or intended exercise of a power under this Act or the regulations shall be brought against the minister, an employee of the Crown, the Heritage Trust, a director, officer or employee of the Heritage Trust, or a person who is subject to the direction of the board or minister.

(2) Subsection (1) does not absolve the Crown from vicarious liability for an act or omission of the minister or employee of the Crown, the Heritage Trust, a director, officer or employee of the Heritage Trust, or a person who is subject to the direction of the board or minister, for which act or omission the Crown would be vicariously liable if this section were not in force.

Civil remedies

40. (1) If a person

(a) fails to comply with the terms and conditions of a permit issued under section 20 (1) or 25 (1),

(b) fails to comply with an order made under section 20 (1) or 26 (1) or (2), or

(c) alters property in contravention of section 17 (3), 18 (1) or (3), 20 (5), 22 (2) or 23 (3),

the minister may apply to the Supreme Court for an order for compliance or restoration.

(2) An order under subsection (1) may include

(a) an order that the person restore the property to its condition prior to the contravention on terms and conditions the court specifies,

(b) an order that the person undertake compensatory conservation work as the court considers appropriate or that conservation work be performed by others at the expense of that person,

(c) an order that the minister undertake conservation work at the expense of the person who was ordered to do so under subsection (1), and

(d) any other requirement the court considers advisable.

(3) If a person

(a) is in possession of an object contrary to section 29 (1),

(b) offers to sell or exchange an object contrary to section 29 (2), or

(c) removes or attempts to remove an object from British Columbia contrary to section 30 (1),

the minister or an owner may apply to the Supreme Court for an order that the object be confiscated and returned to the lawful owner as the court determines.

(4) This section applies whether or not a person is charged with an offence under section 42.

Injunction

41. The Supreme Court may, on an application by the minister and on being satisfied that there is reason to believe that there is or will be a contravention of this Act or a regulation made under it, grant an injunction restraining a person from continuing or committing the contravention, and, pending the disposition of the action seeking the injunction, the court may grant an interim injunction.

Offences and penalties

42. (1) A person who

(a) contravenes section 15 (3), 19 (1), 20 (4), 27 (4) or 29 (1) to (3),

(b) contravenes the terms or conditions of an order or permit issued under section 20 or 25,

(c) fails to comply with an order made under section 26 (1) or (2),

(d) contravenes a regulation made under section 43 (2) (d), or

(e) contravenes section 17 (3), 18 (1) and (3), 20 (5), 22 (2), 23 (3) or 30 (1)

commits an offence.

(2) A person convicted of an offence under subsection (1) (e) is liable,

(a) if the person is an individual, to a fine of not more than $50 000 or to imprisonment for a term of not more than 2 years or to both, and

(b) if the person is a corporation, to a fine of not more than $1 000 000.

(3) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence also commits the offence and is liable

(a) to the penalty set out in section 4 of the *Offence Act* with respect to offences referred to in subsection (1) (a) to (d), and

(b) to the penalty set out in subsection (2) (a), with respect to offences referred to in subsection (1) (e).

(4) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Regulations

43. (1) The Lieutenant Governor in Council may make regulations.

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations

(a) respecting the form, content and manner of giving of any notice,

(b) respecting the form, content and manner of giving of information for registration in the Provincial heritage registry under section 13,

(c) adding Provincial historic attractions to the Schedule,

(d) respecting the administration of Provincial historic attractions including, without limitation, the maintenance of order at Provincial historic attractions, and

(e) prescribing persons entitled to notice under section 24 (1) (c).

Transitional

44. (1) All Provincial heritage designations made under a former Act that have not been rescinded are hereby continued as if they were designated by the Lieutenant Governor in Council under section 23, but a continuance under this subsection does not entitle any person to compensation under section 23 (5).

(2) All municipal heritage designations made under section 714A of the *Municipal Act* or under the *Heritage Conservation Act*, R.S.B.C. 1979, c. 165, that have not been rescinded are hereby continued as if they were designated in a bylaw under section 741.94 of the *Municipal*

Act, but a continuance under this subsection does not entitle any person to compensation under section 741.94 (4) of that Act.

(3) Any term or condition of a permit or order made under a former Act with respect to the disposition and protection of objects removed from heritage property is hereby continued.

(4) A director of the British Columbia Heritage Trust appointed under section 17 of the *Heritage Conservation Act*, R.S.B.C. 1979, c.165, who was serving as a director on the date this Act comes into force, continues to serve as a director of the Heritage Trust at pleasure of the Lieutenant Governor in Council.

(5) Covenants registered by the Crown, the Heritage Trust or a council under section 27 of the *Heritage Conservation Act*, R.S.B.C. 1979, c. 165, shall be deemed to continue as if they were registered under section 215.1 of the *Land Title Act*.

Repeal

45. The following Acts are repealed:

(a) the *Heritage Conservation Act*, R.S.B.C. 1979, c. 165;

(b) *The Indian Graves Ordinance, 1867*.

Consequential Amendments

Land Title Act

46. Section 86 (1) (c) (vi) of the *Land Title Act*, R.S.B.C. 1979, c. 219, is amended by adding"or the conservation of heritage property" after"the natural environment".

47. The following section is added:

Heritage and environmental covenants

215.1 (1) In this section "covenantee" means

(a) the Crown, a municipality or a regional district, or

(b) any person designated by the Minister of Municipal Affairs, Recreation and Culture or the Minister of Environment for the purpose of this section.

(2) A covenant, whether of a negative or positive nature, respecting the conservation of land or heritage resources or values on or associated with land, may be registered in favour of a covenantee as a charge against the title to that land and is enforceable against the covenantor and the covenantor's successors in title, even if the covenant is not annexed to land owned by the covenantee.

(3) Section 215 (3), (4), (5) and (6) applies to a covenant under this section.

(4) Where, in the opinion of the Lieutenant Governor in Council, a covenant under this section is not in the public interest, the Lieutenant

Governor in Council may, by order and on notice to the parties, extinguish the covenant.

(5) An order under subsection (4) shall contain a description of the covenant, particulars of its registration in the land title office and a description of the land affected by the covenant that is sufficient for the registrar to identify them in his or her records.

(6) On receipt of a certified copy of an order made under subsection (4), the registrar shall, without fee or application, file the order and effect a cancellation of the covenant as a charge on the land described in the order.

Municipal Act

48. Section 1 of the *Municipal Act*, R.S.B.C. 1979, c. 290, is amended by adding the following definitions:

"conservation" includes any activity undertaken to protect, preserve or enhance the heritage value of heritage property or the heritage character of an area;

"heritage development permit area" means an area designated in an official community plan under section 945 (4) (c);

"heritage property" means means property that

(a) has sufficient heritage value in the opinion of the government or a local government to justify its conservation, or

(b) is protected heritage property;

"heritage value" means scientific, educational, aesthetic or cultural worth or usefulness;

"preservation" means action taken to protect the form, integrity and fabric of heritage property and includes stabilization and maintenance;

"protected heritage property" means property that is

(a) protected under section 17, 18 (1) or 23 of the *Heritage Conservation Act*,

(b) designated as protected under section 741.94, or

(c) listed as heritage property in a schedule under section 945 (4.2).

49. Section 269.1 (1) is amended in paragraph (b) of the definition of "business promotion scheme" by striking out "or structures" and substituting "or structures, or the conservation of heritage property,".

50. The following section is added:

Conservation support

269.2 Notwithstanding section 292 and subject to any terms and conditions that the council may choose to apply, a council may, by a vote of at least 2/3 of the council members, provide financial or other assistance for the conservation of heritage property.

51. The following section is added:

General conservation authority

270.1 (1) A council may engage in activities or expend funds

(a) to acquire, conserve and develop heritage property,
(b) to gain knowledge about the community's history and heritage,
(c) to increase public awareness, understanding and appreciation of the community's history and heritage, and
(d) for any other activities that it considers necessary or desirable with respect to the conservation of the community's heritage.

(2) Notwithstanding section 292, a council may support and give financial assistance to activities referred to in subsection (1) when they are undertaken by others.

52. The following section is added:

Heritage recognition

279.1 A council may, by resolution, recognize the heritage value of any heritage property and may, with the permission of the owner of the heritage property, erect a plaque or commemorative marker on or near that heritage property.

53. Section 400 (2) (a) is repealed.

54. The following section is added:

Exemptions for heritage properties

400.1 (1) In this section, "protected heritage property" includes property that is
(a) protected heritage property as defined in section 1,
(b) subject to a heritage revitalization agreement under section 982.1, or
(c) subject to a covenant under section 215.1 of the *Land Title Act*.

(2) Notwithstanding section 292 and subject to such terms and conditions as it may choose to apply, a council may, by bylaw adopted by 2/3 of its members, provide that, for a period not to exceed 10 years, all or part of a protected heritage property shall be exempt from all or part of the property tax levy.

(3) Where the heritage property is a building or other improvement so affixed to the land as to constitute real property, the exemption under subsection (1) may apply also to the land on which the heritage property is affixed.

(4) A bylaw under subsection (2) may provide that where
(a) heritage property is destroyed, whether with or without proper authorization under the requirements of the heritage protection of the property, or
(b) heritage property is altered by or on behalf of the owner without proper authorization under the requirements of the heritage protection of the property,

the owner shall pay to the municipality the sum of the total taxes exempted, together with accrued interest compounded annually at a rate equal to the average annual prime lending rate charged to the government by the banker to the government.

(5) A council may, by bylaw, waive all or part of a requirement for repayment under subsection (4).

55. Section 401 is amended

(a) in subsections (1) and (4) by adding "or 400.1" after "section 400", and

(b) in subsection (5) by striking out "section 400 or this section" and substituting "section 400, 400.1 or this section".

56. Section 409 (1) is amended by striking out "section 400 or 401," and substituting "section 400, 400.1 or 401,".

57. The following section is added:

Conservation of heritage property

530.1 In this Part and in Division (1) of Part 13, conservation of heritage property may be a municipal or public purpose, or may be included with a municipal or public purpose.

58. Section 531 is repealed and the following is substituted:

Power to accept any property

531. (1) The council of a city, town, district or village municipality may accept and receive any property devised, bequeathed, conveyed or transferred to the municipality, subject to any trusts on which the property is devised, bequeathed, conveyed or transferred.

(2) If the sale of a property so accepted or received is necessary in order to carry out the terms of a trust, the council may sell it, notwithstanding any limitations or restrictions in this Act.

(3) All money held by a municipality subject to a trust shall, until required for the purposes of the trust, be invested in the manner provided for the investment of sinking funds.

(4) If, in the opinion of the council, the directions, terms or trusts imposed by a donor, settlor, transferor or testator are no longer in the best interests of the municipality, the council may, with the consent of the minister, apply to the Supreme Court for an order authorizing such variation of the directions, terms or trusts as the court, having the intent of the donor, settlor, transferor or testator in mind, considers will better further both that intent and the best interests of the municipality.

(5) Sections 88 and 89 of the *Trustee Act* apply to an application referred to in subsection (4).

59. Section 532 is amended

(a) in subsections (1) and (2) by adding "or heritage property" after "land", and

(b) by repealing subsection (4) and substituting the following:

(4) No bylaw may be enacted or work undertaken by a council if the bylaw or work would be in conflict with the purpose of a reservation made under this section or a dedication made under section 533.

60 Section 533 is amended by adding the following subsections:

(3) If, in the opinion of the council as determined by a resolution adopted by an affirmative vote of at least 2/3 of all the members of the council, a dedication made under subsection (2) is no longer in the best interests of the municipality, the council may apply to the minister for an order authorizing the rescinding of the dedication subject to such terms and conditions as the minister considers appropriate.

(4) When making an order under subsection (3) the minister may consider

(a) the purpose of the dedication and the intent of the council at the time when the dedication was enacted,

(b) the best interest of the municipality as identified by the council, and

(c) any submissions made by individuals or organizations with respect to the dedication.

61. Section 570 (2) is amended by adding "conserve," after "maintain,".

62. Section 651 is amended

(a) in subsection (1) by striking out "and" at the end of paragraph (j), by adding "and" at the end of paragraph (k) and by adding the following paragraph:

(l) conserving heritage property. , and

(b) in subsection (2) (c) by striking out "(f) and (g)" and substituting "(f), (g) and (l)."

63. Section 679 (1) is amended

(a) in paragraph (a) by striking out "exhibition buildings." and substituting "exhibition buildings, and heritage property or land necessary for the conservation of heritage property.",

(b) in paragraph (b) by adding "conservation," after "operation,", and

(c) in paragraph (d) (i) by adding "conservation," after "operation,".

64. Section 682 is amended

(a) in subsection (1) by adding ", conserve heritage property," after "improvements",

(b) in subsection (2) (a) by adding "conserving," after "constructing,", and

(c) in subsection (2) (b) by adding "conservation," after "construction,".

65. Section 683 is amended

(a) in subsection (1) by striking out "public park or pleasure ground" and substituting "public park, pleasure ground or heritage property", and

(b) by repealing subsection (2) and substituting the following:

(2) When a grant is made under subsection (1), the public park, pleasure ground or heritage property may be managed, conserved and maintained by the council in accordance with the trust, and the council has and may exercise in it all the powers and authorities conferred on the trustees of the public park, pleasure ground or heritage property by any Act of the Legislature.

66. Section 684 is amended by adding ", heritage property" after "public park".

67. Part 21 is amended by adding the following division:

DIVISION (6) – HERITAGE CONSERVATION

Interpretation

741.1 (1) Section 943 applies to this Division.

(2) In this Division

"alter" means to change in any manner, and without limitation, includes

(a) the making of an improvement, as defined in the *Builders Lien Act*, and

(b) any action that derogates from the heritage value of heritage property;

"approval" means a permit, licence or other authorization required under this or any other enactment;

"heritage inspection" means physical examination and research necessary

(a) to assess the heritage value of property or a portion of it, or

(b) to determine the need for conservation.

(3) This Division shall not be used to conserve natural landscapes or undeveloped land, except

(a) to the extent that restrictions on the development of adjoining properties is, in the opinion of the local government, necessary for the conservation of one or more buildings, structures or land that is protected heritage property, or

(b) with respect to

(i) sites having heritage value related to human occupation or use, or

(ii) individual landmarks and natural features that have cultural or historic value.

Delegation

741.2 (1) The council may, by bylaw, adopted by at least 2/3 of all its members, delegate to a commission established under section 741.4 or to an official or any other person its administrative and executive powers, duties or functions under this Division.

(2) A delegation bylaw enacted under subsection (1) shall provide that a person owning property affected by a decision made under a delegated power, duty or function may apply for a reconsideration of the decision by the local government, and when an application is made

(a) the decision made by the delegate is without effect, and
(b) the application for the development permit must be dealt with by the council of the municipality or the board of the regional district.

No compensation

741.3 Except as provided in section 741.94 (4), compensation is not payable to any person for any reduction in the value of that person's interest in land or for any loss or damages that result from the exercise in good faith of any power in this Division.

Community heritage commissions

741.4 (1) A local government may, by bylaw, establish one or more community heritage commissions.

(2) A bylaw under subsection (1) shall set out
(a) the number of members of each commission and the manner of their appointment,
(b) the rules of practice and procedure regulating the business of the commissions, and
(c) the terms of reference of each commission.

(3) A community heritage commissions may
(a) advise the local government on any matter that is included in its terms of reference or referred to it by the council,
(b) undertake or provide support for such activities as are included in its terms of reference or authorized by the local government, and
(c) exercise any of the powers or perform any of the duties or functions that are delegated to it by the local government.

(4) Sections 220 and 221 apply to meetings of a community heritage commission.

(5) Meetings of the commission shall be open to the public except for those meetings or portions of meetings at which the commission considers matters with respect to which the local government has authorized it to meet in private.

(6) A local government may establish different community heritage commissions for different areas within the municipality or regional district.

(7) A local government may establish joint community heritage commissions with one or more other local governments or with one or more bands as defined in the *Indian Self Government Enabling Act*.

Community heritage registry

741.5 (1) A local government may, by resolution, establish a community heritage registry that identifies real property or portions of it that are considered by the local government to be heritage property.

(2) The community heritage registry shall indicate the reasons why a property that is included in a community heritage registry is considered to have heritage value, and may distinguish between heritage properties of differing degrees and kinds of heritage value.

(3) Within 30 days after identifying or deleting property from a community heritage registry, the local government shall give notice in the prescribed form

(a) to the owner of the property,

(b) to the heritage registry established under the *Heritage Conservation Act*, and

(c) to the land title office.

Heritage inspection

741.6 (1) A local government or its designate may order a heritage inspection of a building, structure or land if the building, structure or land

(a) is or may include protected heritage property,

(b) is included in a community heritage registry adopted under section 741.5, or

(c) may be, include or contain a site or object that meets criteria adopted by the local government for the identification of heritage property.

(2) An order under subsection (1)

(a) shall state the purpose of the heritage inspection,

(b) may include terms and conditions the local government considers appropriate, and

(c) may require the owner to preserve the property subject to the order until the heritage inspection is completed.

(3) An order under subsection (1) may authorize the person conducting the heritage inspection to enter land or premises identified in the order and section 21 of the *Heritage Conservation Act* applies with respect to that entry.

(4) A person undertaking a heritage inspection under this section may make such minor and inconspicuous alterations to property, including the removal of material samples, as are necessary for the purpose of the heritage inspection.

(5) A heritage inspection shall be deemed to be completed on the earlier of

(a) the day on which a heritage inspection report is delivered to a meeting of the local government, or

(b) the expiry of 30 days from the day on which the heritage inspection is ordered.

(6) Except as authorized by the local government or its designate, no person shall alter property with respect to which a heritage inspection is ordered until the heritage inspection is completed.

Provincial heritage protection

741.7 (1) Where an application is made to a local government for any approval to enable an activity or action which, in the opinion of the official who issues the approval, may constitute an alteration of property protected under section 18 or 23 of the *Heritage Conservation Act*, that official shall notify the minister in a manner satisfactory to the minister no less than 10 days prior to the issuance of the approval, unless the applicant provides evidence that the requirements of those sections have been met.

(2) Any approval issued by a local government that authorizes the excavation of land shall contain a notice, in a form approved by the minister, that refers to the protection and requirements with respect to heritage property as set out in sections 18 and 19 of the *Heritage Conservation Act*.

(3) Where, in the opinion of the local government, an object or Crown land has heritage value, the local government may, by resolution, request that the minister consider protection of the object or land under the *Heritage Conservation Act*.

(4) Where a resolution has been passed under subsection (3), no person shall alter the object or land or remove the object from British Columbia for a period of 30 days from the passage of the resolution or until the minister notifies the local government in writing that Provincial heritage protection will not be given to the object or land.

(5) In subsection (4) "person" includes the Crown.

(6) No more than one resolution may be made under subsection (3) with respect to any object or Crown land.

Heritage impact assessment

741.8 (1) The local government or its designate may require an applicant for an approval affecting protected heritage property, prior to consideration of the issuance of the approval, to provide information with respect to the possible effect of the action on the heritage property.

(2) A requirement under subsection (1) shall

(a) be communicated to the applicant in writing, and

(b) include specifications governing the information required and the qualifications of any persons undertaking studies to produce the information.

(3) Specifications referred to in subsection (2) shall not be amended by the local government or its designate except with the approval of the applicant.

(4) Information required under subsection (1) shall be deemed to have been received

(a) in the case of a requirement made by a local government, on the date of the meeting of the local government next following the delivery of the information to the local government, or

(b) in the case of a requirement made by a designate of the local government, at the earlier of

(i) its date of receipt by the designate, or

(ii) 5 days after it is delivered to the office of the designate.

(5) The time limits required for the processing of the application for an approval shall be deemed not to include the period between a requirement under subsection (1) to provide information and the receipt of the information under subsection (4).

Temporary withholding of approvals – heritage registry properties

741.9 (1) A local government may, by resolution, and subject to any guidelines, terms or conditions it may establish, authorize a person who

issues approvals to withhold the issuance of an approval and refer the matter to the next meeting of the local government if the person considers that the issuance of the approval would affect the heritage value of any property identified in a community heritage registry.

(2) Nothing in subsection (1) authorizes the continued withholding of an approval that the applicant would otherwise be entitled to beyond the first meeting of the local government at which the heritage factors are brought to the attention of the local government.

Temporary withholding of approvals – protected heritage property

741.91 (1) In this section "protected heritage property" includes real property that is

(a) protected heritage property as defined in section 1,

(b) subject to a heritage revitalization agreement, under section 982.1,

(c) subject to a covenant under section 215.1 of the *Land Title Act*,

(d) dedicated under section 533,

(e) reserved under section 532, or

(f) subject to temporary heritage protection under section 741.6, 741.7, 741.93 or 741.97.

(2) Where an application is made to a local government for an approval to authorize an action that, in the opinion of the official charged with the issuance of the approval, might alter or cause an alteration to protected heritage property the official shall withhold the issuance of the approval until the next meeting of the local government and shall notify the local government of the heritage factors relating to the application.

(3) A local government may, by resolution, for protected heritage property, require that an approval not be given until

(a) there has been compliance with the terms of the heritage protection,

(b) the applicant agrees to terms and conditions satisfactory to the local government or its designate to mitigate or prevent the circumstances that would derogate or cause derogation of the heritage value of the property, or

(c) in the case of property protected under the *Heritage Conservation Act*, the applicant provides evidence that the requirements of that Act do not apply or have been met.

Temporary withholding of permits for demolition

741.92 (1) Without restricting section 741.91, a local government may, by resolution, subject to any guidelines, terms and conditions it may establish, authorize the withholding of permits for demolition until building permits and all other necessary approvals have been issued with respect to the alteration or replacement development of real property that is

(a) protected heritage property, or

(b) identified in a community heritage registry established under section 741.5.

(2) Nothing in this section authorizes the withholding of any approvals that are required for redevelopment of the site of a heritage registry property, other than permits for demolition of heritage property.

Temporary heritage protection

741.93 (1) Where, in the opinion of a local government, a building, structure or land that has possible heritage value may be subject to alteration, the local government may, by resolution, order that the building, structure or land is protected under this section for a period not exceeding 60 days or a longer period agreed to by the owner of the building, structure or land.

(2) Except as authorized by the local government or its designate, no person shall alter a building, structure or land that is subject to a resolution under subsection (1).

(3) Except as authorized by the local government or its designate, no person shall alter a building, structure or land during the period of 60 days from the day on which a bylaw receives first reading or a longer period agreed to by the owner of the building, structure or land if the bylaw would

(a) designate the building, structure or land for protection under section 741.94, or

(b) create a heritage development permit area, or extend an existing heritage development permit area, that would include the building, structure or land.

Heritage designation

741.94 (1) The local government may, by bylaw and on such terms and conditions as it considers appropriate,

(a) designate real property, in whole or in part, as heritage property protected under this section, and

(b) designate, in whole or in part, real property that does not have heritage value but is, in the opinion of the local government, necessary for the conservation of one or more protected heritage properties.

(2) A heritage designation bylaw made under this section may

(a) apply to more than one separate building, structure or parcel of land, including property under diverse ownership,

(b) identify affixed interior building features or fixtures that are included in the protection under this section,

(c) identify trees and other natural or man made landscape features that are included in the protection under this section,

(d) establish policies or procedures regarding the provision of financial or other support for the conservation of the heritage property,

(e) establish policies regarding types of alterations to the heritage property for which authorization under this section is not required, and

(f) establish policies and procedures regarding the authorization of actions or activities for which authorization from the local government or its designate is required under subsection (3).

(3) Except as authorized in writing by the local government or its designate, no person shall

(a) alter the exterior of a building or structure protected under this section,

(b) make a structural change to or move a building or structure protected under this section,

(c) alter or remove an interior feature or fixture that is identified under subsection (2)(b),

(d) alter, remove or take any action that would damage a tree or other natural or man made landscape feature that is identified under subsection (2)(c), or

(e) alter, excavate or build on land protected under this section.

(4) If a designation made under this section causes a reduction in the market value of the property that has been designated, the local government shall compensate the owner of the property in an amount and form agreed upon by local government and the owner.

(5) Subsection (4) does not apply where a property was already protected heritage property immediately before it was designated as protected under this section.

(6) If a local government and an owner are unable to agree on compensation under subsection (4), they shall submit the difference to a single arbitrator for binding arbitration in accordance with the *Commercial Arbitration Act*.

(7) If the local government and owner are unable to agree on who should be appointed as the arbitrator, they shall each appoint an arbitrator who shall in turn appoint a 3rd arbitrator to act as chairperson.

(8) The arbitrator or arbitrators shall consider, in determining the amount of compensation to which the owner may be entitled,

(a) eligibility for support for conservation of the heritage property that is available to the owner because of the designation of the heritage property under this section, and

(b) eligibility for changes to or variation in the application of bylaws that that the local government is prepared to enact under of this Act to support the economic viability of the heritage property that are available to the owner because the designation of the heritage property under this section.

Heritage designation procedure

741.95 (1) Before a heritage designation bylaw is adopted or amended under section 741.94 the local government shall hold a public hearing on the bylaw for the purpose of allowing the public to make representations to the local government respecting matters contained in the proposed bylaw.

(2) Sections 956 (2), (3) and (5) to (9), 957, including subsection (3) of that section, and 959 apply with respect to the public hearing and enactment of the heritage designation bylaw.

(3) A report shall be made available to the owner and tenants in occupation, if any, and the public no less than 10 days prior to the public hearing and the report shall include information with respect to

(a) the heritage value of the property,

(b) the compatibility of conservation with the community planning objectives in the area in which the property is located,

(c) the compatibility of conservation with lawful uses of the heritage property and adjoining lands,

(d) the condition and viability of the property,

(e) the costs and benefits of conservation, and

(f) the possible need for public support to enable appropriate conservation.

(4) A local government may, subsequent to the public hearing, amend the proposed designation bylaw if no additional properties are added for which the owner has not been given notice.

(5) Within 30 days of the adoption or revocation of a designation bylaw, or if the council does not designate property for which notice has been given under subsection (2), the council shall so notify the owner and tenants in occupation, if any.

(6) Where the designation bylaw has been enacted, the notice under subsection (5) shall include

(a) a copy of the heritage designation bylaw,

(b) a copy of any bylaw adopted under section 741.96 that applies to the property that has been designated, and

(c) any other information that the minister may prescribe.

(7) Within 30 days after enacting or amending a heritage designation bylaw under section 741.94, the local government shall register a certificate of the designation bylaw or amending bylaw in the land title office for each property to which the heritage designation bylaw applies.

(8) A certificate under subsection (7) shall contain a description of the land affected by the designation that is sufficient for the registrar to identify the land in his or her records.

(9) On receipt of a certificate under subsection (7), the registrar of land titles shall register it in the same manner as a charge is registered and shall endorse the municipality or regional district as the registered owner of the charge.

(10) Within 30 days of enacting, repealing or amending a heritage designation bylaw under section 741.94, the local government shall notify the heritage registry established under the *Heritage Conservation Act* in a manner satisfactory to the minister.

(11) No heritage designation bylaw enacted under section 741.94 is invalid for inadvertent and minor noncompliance with this section or for an error or omission in the report required under subsection (3).

Heritage site maintenance standards

741.96 (1) The local government may, by bylaw, establish standards for the maintenance of buildings and structures or land that is

(a) designated as protected under section 741.94, or

(b) within a heritage development permit area.

(2) Different standards may be established for different heritage areas or for different types or classes of buildings and structures.

(3) Where, in the opinion of the local government, the maintenance of heritage property is not consistent with the standards established under subsection (1), the local government may apply to the Supreme Court for an order requiring the owner of the property to bring the property up to the established standards.

(4) Where the maintenance of heritage property is not consistent with the standards established under this section, and where the heritage value or continued viability of the heritage property is threatened by deterioration owing to the lack of appropriate maintenance, the local government may apply to the Supreme Court for an ex parte order authorizing persons appointed by the local government to enter on the site and undertake such maintenance as is necessary to meet the standards.

(5) The costs incurred by persons undertaking maintenance in accordance with an order under subsection (4) shall be collected in the same manner and with the same remedies as ordinary taxes on land and improvements under this Act.

Heritage control period

741.97 (1) A local government may, by resolution, declare a heritage control period with respect to an area specified in the resolution of no more than one year during which time it may reject, defer or grant subject to such conditions as it may impose, any application for an approval that would authorize an alteration to a possible heritage property.

(2) Where a heritage control period has been declared, no person shall during that period

(a) alter the exterior of a building or structure or move a building or structure,

(b) alter, move or remove a natural or landscape feature, or

(c) alter, excavate or build on land

in the area specified in the resolution unless authorized by the local government or its designate.

(3) A heritage control period under this section may be declared once only during any 10 year period for an area or portion of an area.

Heritage alterations

741.98 (1) A local government may, by bylaw, with respect to an authorization to alter heritage property that is

(a) protected under this Division, or

(b) listed in a schedule under section 945 (4.2)

provide for consolidation under this section of all approvals required with respect to the proposed physical changes to the heritage property.

(2) The procedures required under this or any other Act for the approvals included in the consolidation shall apply to the approval consolidated under subsection (1).

(3) A local government may, by resolution, require as a condition of an authorization to alter heritage property, that is

(a) designated under section 741.94, or

(b) listed in a schedule under section 945 (4.2),

require that the applicant provide security by, at the applicant's option, an irrevocable letter of credit or the deposit of securities in a form satisfactory to the local government, in an amount stated in resolution.

(4) Where a local government considers that a condition in a permit has not been satisfied or where, as a result of contravention of a condition in a permit, an unsafe condition has resulted, the local government may

(a) undertake and complete the works required to satisfy the condition or carry out any construction required to correct the unsafe condition, at the cost of the holder of the permit, and

(b) apply the security in payment of the cost of the works, with any excess to be returned to the holder of the permit.

(5) Interest earned on the security provided under subsection (3) shall accrue to the holder of the permit and be paid immediately on return of the security or, on default, become part of the amount of the security.

Review by Ombudsman

741.99 (1) In this section "ombudsman" means the ombudsman appointed under the *Ombudsman Act*.

(2) The ombudsman may investigate complaints as to

(a) a decision made, or

(b) a procedure used

by a local government under this Division.

(3) The *Ombudsman Act*, other than sections 9 (4) and 11 (1) (a), applies to investigations under subsection (2) and for that purpose the local government shall be deemed to be an authority as defined in that Act.

(4) Subsection (2) does not authorize the ombudsman to investigate

(a) a decision made under delegated authority, or

(b) an issue involving compensation for loss of value to property caused by a designation under sections 741.94.

(5) During the investigation the ombudsman may direct that no action shall be taken by the local government or the complainant on any or all matters designated by the ombudsman.

(6) Where the ombudsman makes a recommendation pursuant to section 22 or 23 of the *Ombudsman Act* and no action that the ombudsman believes adequate or appropriate is taken by the local government within a reasonable time,the ombudsman may inform the Lieutenant Governor in Council of the recommendation and make such additional comments as he or she considers appropriate.

(7) On receipt of the report the Lieutenant Governor in Council may make an order that the Lieutenant Governor in Council believes is in the public interest, which is binding on the local government in the same way as if it were a regulation made by the Lieutenant Governor in Council under this Act.

68. Section 750.1 (1) is amended by striking out "or" at the end of paragraph (a) (ii), by adding "or" at the end of paragraph (b) and by adding the following paragraph:

(c) discovers that heritage property has been altered in contravention of

(i) a requirement for, or the terms and conditions of, an authorization for alterations under Division (6) of Part 21,

(ii) a requirement for, or the terms and conditions of, a development permit required under section 976,

(iii) the terms and conditions of a heritage revitalization agreement under section 982.1, or

(iv) a covenant registered by the local government under section 215.1, .

69. The following sections are added:

Civil remedies

750.2 (1) If a person

(a) fails to comply with the terms and conditions of an authorization to alter property that is required under Division (6) of Part 21,

(b) alters property in contravention of section 741.6 (6), 741.7 (4), 741.93 (2) or (3) ,741.94 (3) or 741.97 (2), or

(c) alters heritage property listed in a schedule under section 945 (4.2) without a development permit or in contravention of the terms of a development permit,

the local government may apply to the Supreme Court for an order for compliance or restoration.

(2) An order under subsection (1) may include

(a) an order that the person restore the property to its condition prior to the contravention on terms and conditions the court specifies,

(b) an order that the person undertake compensatory conservation work as the court considers appropriate or that conservation work be performed by others at the expense of that person,

(c) an order that the local government undertake conservation work at the expense of the person who was ordered to do so under paragraph (b), and

(d) any other requirement the court considers advisable.

(3) This section applies whether or not a person is charged with an offence under section 750.3.

Heritage infractions

750.3 (1) A person who

(a) unlawfully alters heritage property included in a schedule under section 945 (4.2), or

(b) alters property in contravention of

(i) Part 21, Division (6) or a bylaw under that Division, or

(ii) a heritage revitalization agreement under section 982.1

is guilty of an offence.

(2) A person convicted of an offence under subsection (1) is liable,

(a) if the person is an individual, to a fine of not more than $50 000 or to imprisonment for a term of not more than 2 years or to both, and

(b) if the person is a corporation, to a fine of not more than $1 000 000.

(3) If a corporation commits an offence under subsection (1), an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence also commits the offence and is liable to the penalty set out in subsection (2) (a).

70. Section 751 is amended by adding ", altered" after "erected".

71. Section 755.1 (2) (d) is amended by striking out "or" at the end of subparagraph (i), by adding "or" at the end of subparagraph (ii) and adding the following subparagraph:

(iii) a member of a community heritage commission under section 741.4, .

72. Section 789 is amended

(a) in subsection (1) by adding the following paragraph:

(f.1) services relating to heritage conservation; , and

(b) by adding the following subsection:

(4) Where the board adopts a bylaw under subsection (1) (f.1), sections 269.2, 270.1, 279.1, 532, 533, 750.1, 750.2 and 750.3 and Part 21 Division (6) apply.

73. Section 790 (2) (d) is repealed.

74. Section 819.1 (4) (c) is repealed.

75. The following section is added:

Exemptions for heritage properties

819.2 (1) In this section, "protected heritage property" includes property that is

(a) protected heritage property as defined in section 1,

(b) subject to a heritage revitalization agreement under section 982.1, or

(c) subject to a covenant under section 215.1 of the *Land Title Act*.

(2) Subject to such terms and conditions as it may choose to apply, a board may, by bylaw adopted by 2/3 of the votes cast, provide that, for a period not to exceed 10 years, all or part of a protected heritage property shall be exempt from all or part of the property tax levy.

(3) Where the heritage property is a building or other improvement so affixed to the land as to constitute real property, the exemption under subsection (2) may apply to the land on which the heritage property is affixed.

(4) An exemption under subsection (2) may apply to the entire property tax levy, or only to the municipal portion of the property tax levy.

(5) A bylaw under subsection (2) may provide that where

(a) heritage property is destroyed, whether with or without proper authorization under the requirements of the heritage protection of the property, or

(b) heritage property is altered by or on behalf of the owner without proper authorization under the requirements of the heritage protection of the property,

the owner shall pay to the regional district the sum of the total taxes exempted, together with accrued interest compounded annually at a rate equal to the average annual prime lending rate charged to the Province by the banker to the Province.

(6) A board may, by bylaw, waive all or part of a requirement for repayment under subsection (5).

76. Section 945 is amended

(a) by repealing subsection (4) (c) and substituting the following:

(c) conservation and revitalization of heritage areas, ,

(b) in subsection (4) (g) by adding the following subparagraph:

(i.1) heritage will be conserved, , and

(c) by adding the following subsection:

(4.2) Where a heritage development permit area is designated under subsection (4) (c), the local government may, by amendment to the official community plan, adopt a plan for the area which may include a schedule listing the heritage properties in the area.

77. Section 952 (1) (b) is amended by adding the following subparagraph:

(i.2) the conservation of a heritage area, .

78. Section 954 is amended by adding "Part 21, Division (6) or" before "this Part" wherever it occurs.

79. The following section is added:

Heritage planning notices

959.1 (1) Within 30 days after adopting, repealing or amending a heritage development permit area, or a schedule of heritage properties under section 945 (4.2), the local government shall, in a manner satisfactory to the minister or registrar, as the case may be, give notice to

(a) the heritage registry established under the *Heritage Conservation Act*, and

(b) with respect to the adoption, repeal or amendment of a schedule of heritage properties under section 945 (4.2), the land title office.

(2) Within 30 days after enacting a schedule under section 945 (4.2) or adding a property to a schedule, the local government shall give notice to

(a) owners of affected property as shown on the assessment roll at the date of the enactment of the bylaw, and

(b) tenants in occupation of the affected property as at the date of the mailing of the notice.

(3) A notice under subsection (2) shall include

(a) a description of the property or part of the property that is considered by the local government to have heritage value,

(b) a statement of the place where and the times when copies of the applicable bylaws may be inspected and obtained,

(c) a copy of the plan adopted for the area under section 945 (4.2), and

(d) any other information the minister may prescribe.

(4) Sections 32 and 38 of the *Heritage Conservation Act* apply to notices given under this section.

(5) The court shall not quash or declare invalid the protection of heritage property by reason of an inadvertent and minor non-compliance with this section.

80. Section 962 (4) is amended

(a) by repealing paragraph (a) and substituting the following paragraph:

(a) be in conflict with a covenant registered under

(i) section 24A of the *Land Registry Act*, R.S.B.C. 1960, c. 208,

(ii) section 27 of the *Heritage Conservation Act*, R.S.B.C. 1979, c. 165, or

(iii) section 215.1 of the *Land Title Act*, , and

(b) by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following paragraph:

(d) apply to a property

(i) for which an authorization for alterations is required under Part 21, Division (6),

(ii) that is in a heritage development permit area, or

(iii) for which a heritage revitalization agreement is in effect.

81. Section 963 (2) is amended by adding the following paragraph:

(b.1) sites that are protected heritage property, .

82. Section 970 (9) is repealed the following substituted :

(9) Where the use and density of buildings and structures conforms to the bylaw but

(a) the siting, size or dimensions of

(i) a building or structure, or

(ii) offstreet parking or loading spaces, or

(b) the number of offstreet parking or loading spaces

does not meet the requirements of a rural land use bylaw or a bylaw under this Division that is adopted after they were constructed or provided, they may be maintained, extended or altered in accordance with subsection (10).

(10) Buildings or structures referred to in subsection (9) may be maintained, extended or altered only to the extent that

(a) the repair, extension or alteration would, when completed, involve no further contravention of the bylaw that existed at the time that the repair, extension or alteration was commenced, or

(b) in the case of heritage property, the repair, extension or alteration is authorized under the terms of its heritage protection or by heritage revitalization agreement.

(11) Subsections (5) and (8) do not apply to alterations or reconstruction that is authorized under the terms of the protection of heritage property or in a heritage revitalization agreement.

83. Section 976 is amended

(a) by repealing subsection (1) and substituting the following:

(1) Where an official community plan designates areas under section 945 (4),

(a) land within the area shall not be subdivided,

(b) construction of, addition to or alteration of a building or structure shall not be commenced, and

(c) land that is within an area designated under section 945 (4) (c) or (d), shall not be or altered

unless the owner first obtains a development permit under this section or is exempted under section 945 (4.1). , and

(b) by adding the following subsections:

(6.1) With respect to an area that has been designated under section 945 (4) (c)

(a) the local government may refuse to issue a development permit where, in its opinion, a proposal would

(i) be incompatible with the objectives established for the area under section 945 (4) (f), or

(ii) derogate from the heritage value of a protected heritage property,

(b) the local government may, by bylaw, delegate to a commission established under section 741.4 or to an employee or official of the local government the authority to issue development permits respecting authorization of alterations that

(i) are compatible with policies for the area established under section 945 (4) and (4.2),

(ii) are compatible with conservation and design guidelines established for the purpose by the local government, and

(iii) except for the requirement for a development permit, would not otherwise require approval by means of a resolution or bylaw enacted by the local government to authorize the alteration, and

(c) a delegation bylaw enacted under paragraph (b) shall provide that a person owning property affected by a decision made under delegated authority may apply for a reconsideration of the decision by the local government, and when an application is made

(i) the decision made by the delegate is without effect, and

(ii) the application for the development permit will be dealt with by the council of the municipality or the board of the regional district.

(6.2) The definition of "alter" in section 741.1 applies to subsection (6.1).

84. The following section is added:

Landmark tree permits

978.1 (1) Subject to section 943 (2), where conservation of landmark trees is identified as an objective in an official community plan, a local government may, by bylaw, require a permit for any activity or action that might be injurious to landmark trees.

(2) A bylaw under subsection (1) shall include criteria for the identification of landmark trees, and different criteria may be established for different species and for different areas.

(3) A bylaw under subsection (1) shall apply only to specific trees that meet the criteria and that are identified as heritage property in a community heritage registry adopted under section 741.5.

(4) A bylaw under subsection (1) shall identify those actions or activities for which a permit under this section is required.

(5) Subject to subsection (6), the local government may refuse to issue a permit.

(6) If an action or activity specified in the bylaw is required for

(a) public safety or the protection of property,

(b) a lawful use of the land under its zoning,

(c) development of the land to its permitted density of use under its zoning, or

(d) a lawful non-conforming use under section 970,

the local government shall

(e) issue a permit for the action or activity, or

(f) by development variance permit or otherwise, provide alternative means for the land to be used for its permitted use or to be developed to its permitted density.

85. The following section is added:

Heritage revitalization agreements

982.1 (1) A local government may, by bylaw, enter into a heritage revitalization agreement with the owner of a building, structure or land that is heritage property.

(2) A heritage revitalization agreement shall define the respective responsibilities of the owner and local government with regard to the conservation of heritage property that is the subject of the agreement, and may

(a) vary provisions of

(i) a bylaw or permit under Part 21, Division (6),

(ii) Part 2 of a rural land use bylaw as described in section 952 (1) (b),

(iii) a bylaw under Division (4), (6) or (7) of this Part, and

(iv) a permit under this Division , and

(b) contain such other terms and conditions as may be agreed upon by the local government and the owner of the property.

(3) Where a provision of a bylaw or permit referred to in subsection (2) (a) is varied by a heritage revitalization agreement, the agreement prevails over the provision varied.

(4) A heritage revitalization agreement shall provide that the local government may, by bylaw, discharge the agreement without the consent of the owner or that person's successors in title

(a) if the agreement is breached by the owner, or

(b) after the lapse of a period of time that is specified in the agreement which is commensurate with the investment in the conservation and revitalization of the heritage property that is provided for in the agreement.

(5) A heritage revitalization agreement may be amended

(a) in the manner specified in the agreement, or

(b) with the agreement of the owner by a development permit under section 976, where the amendment does not

(i) vary the permitted use, or

(ii) increase the permitted density of use

of the land against which the agreement is registered.

(6) A local government shall not require an owner to enter into a heritage revitalization agreement as a condition for the issuance of any permit, licence or other authorization that may be required to enable property to be used or developed in accordance with the property's applicable zoning under section 963.

(7) A local government shall not enter into or amend a heritage revitalization agreement unless the agreement or amendment, as the case may be, is approved

(a) by the Minister of Environment if it varies a provision of a bylaw under section 969,

(b) by the Minister of Transportation and Highways if it covers land subject to section 57 (2) of the *Highway Act*, or

(c) by the minister

(i) if it varies a provision of a bylaw respecting permitted use, density of use or subdivision servicing standards and applies to land that is not within an area to which an official community plan applies,

(ii) if it applies to land that is not previously protected heritage property or identified in a community heritage registry adopted under section 741.5, or

(iii) under any other circumstances the minister may prescribe.

(8) A local government shall not

(a) enter into a heritage revitalization agreement, or

(b) amend an existing agreement in such a way as to permit

(i) a substantial alteration to heritage property, or

(ii) a use or density of use that is not otherwise enabled under the applicable zoning of the property

without first holding a public hearing on the applicable agreement or amendment.

(9) For the purposes of subsection (8), sections 956 to 959 apply to this section.

(10) A heritage revitalization agreement shall be registered by the local government in the land title office in the same manner as a covenant under section 215 of the *Land Title Act* and, except as otherwise provided in this section, it shall have the same force and effect as a covenant entered into under section 215 of the *Land Title Act*.

Other Consequential Amendments

In addition to the amendments to the *Land Title Act* and *Municipal Act* shown in this draft, consequential amendments will need to be made to other Acts as shown in the following table:

Act	Reason for Amendment
Assessment Act	Significant amendments to clarify the status of heritage property within the assessment system in the Province.
British Columbia Buildings Corporation Act	To provide clear enabling authority for the conservation of Crown heritage property by the corporation.
Capital Commission Act	To clarify Provincial capital commission authority to conserve heritage property.
Cemetery and Funeral Services Act	To clarify the authority of the *Heritage Conservation Act* with respect to native burials, and to clarify management responsibilities for closed and pioneer cemeteries.
Coal Act	To incorporate the heritage impact assessment process in coal mining permit processes.
College and Institutes Act	To clarify the authority of institutions with respect to conservation of heritage property.
Condominium Act	To clarify responsibilities of strata owners and a strata corporation with respect to maintenance of protected heritage property.
Forest Act	To incorporate the heritage impact assessment and mitigation requirements into the forest planning and permit processes.
Hospital Act	To clarify validity of heritage designations of hospital owned property.

Act	Reason for Amendment
Islands Trust Act	To provide enabling authority for heritage conservation by the Islands Trust.
Land Act	To establish a category of Crown land stewardship site within the framework of Crown land management.
Local Services Act	To enable minister to exercise local government heritage powers in local services areas.
Mineral Tenure Act	To clarify the responsibilities of prospectors and claim holders with respect to protected heritage property and to provide authority to protect sites/objects of geological, palaeontological or scientific significance.
Mines Act	To incorporate heritage impact assessment process in mining permit process.
Municipal Aid Act	To clarify grant in lieu status of protected heritage property owned by the Crown.
Park Act	To clarify the authority of the Ministry of Parks to manage protected heritage property assigned to the ministry.
Taxation (Rural Area) Act	Minor consequential amendment adding cross reference.
University Act	To clarify board and senate roles regarding conservation of university heritage property.
University Endowment Land Act	To enable minister to exercise local government heritage powers on University Endowment Lands.
Vancouver Charter	Extensive amendments to incorporate enabling authority for heritage conservation by the City of Vancouver.

Commencement

86. This Act comes into force by regulation of the Lieutenant Governor in Council.

SCHEDULE

Provincial Historic Attractions

Barkerville Historic Town
Carr House
Cottonwood House
Craigflower Farmhouse
Craigflower Schoolhouse
Fort Steele Heritage Town
Grist Mill at Keremeos
Helmcken House
Historic Hat Creek Ranch
Kilby General Store Museum
Point Ellice House
Richfield Courthouse
St. John the Divine Precinct, Yale

Heritage Legislation

A GUIDE TO COMMUNITY HERITAGE CONSERVATION

Province of
British Columbia

Ministry of Municipal Affairs, Recreation and Culture
Hon. Lyall Hanson, Minister

LEGISLATIVE LIBRARY
VICTORIA, B.C.

Heritage Legislation

A GUIDE TO COMMUNITY HERITAGE CONSERVATION

Province of
British Columbia

Ministry of Municipal Affairs, Recreation and Culture
Hon. Lyall Hanson, Minister

Canadian Cataloguing in Publication Data

British Columbia. Ministry of Municipal Affairs, Recreation and Culture.
Heritage legislation

In folder.
Title from folder.
Contents: Heritage legislation, a guide to community heritage conservation — Heritage Legislation, improving stewardship for heritage resources of native origin — Heritage legislation, a draft bill.
ISBN 0-7726-1322-2

1. Historic sites — Government policy — British Columbia. 2. Historic sites — Law and legislation — British Columbia. 3. Indians of North America — British Columbia — Antiquities — Government policy. 4. Indians of North America — British Columbia — Antiquities — Law and legislation. 5. British Columbia - - Antiquities — Government policy.
I. Title.

FC3812.B74 1991 354.7110085'9 C91-092136-9
F1087.8.B74 1991

Contents

1. Introduction 2

It's up to you to choose
Using the tool kit

2. Planning for heritage conservation 3

The process
Tools for local governments
Tools for property owners
Tools for heritage organizations

3. Developing a strategy 4

Residential property
Commercial / industrial / institutional property
Natural features
Municipally owned property
Regional districts

4. The Tools 8

PLAN

Community heritage commission 9
Community heritage registry 10
Official community plan 12

CONSERVE

Support Tools

Direct local government financial assistance 13
Other local government support 14
Tax exemption 15
Local improvement area / business improvement area 16

Basic Protection Tools

Development permit and Development permit area 18
Local government heritage designation 20
Conservation covenant 21
Heritage revitalization agreement 22
Reservation and Dedication of heritage property 23
Landmark tree protection 24

Special Purpose Tools

Temporary heritage protection 25
Heritage impact assessment 26
Heritage inspection 27
Heritage site maintenance standards 28
Review process 29
Injunctions, remedies and penalties 30
Acquisition and expropriation 31

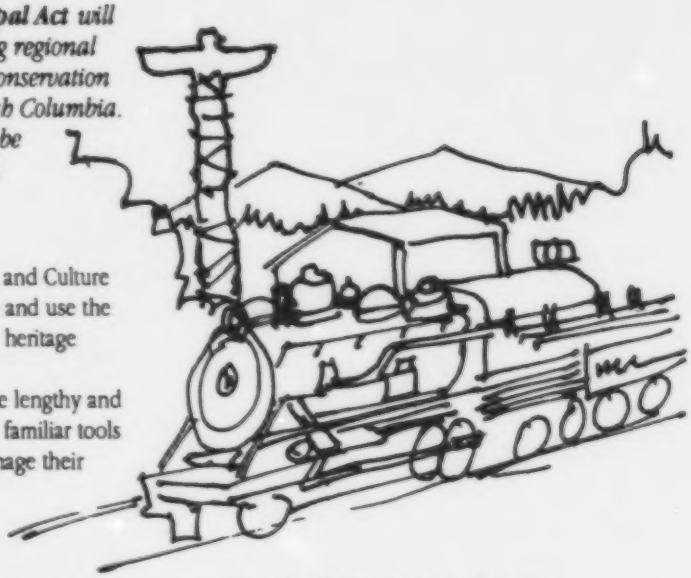
PRESENT 32

Organization
Public awareness
- Marketing
- Promotion

Interpretation
Recognition

1. Introduction

Proposed amendments to the ***Municipal Act*** *will enable local governments (including regional districts) to use a variety of tools for the conservation of community heritage resources in British Columbia. Amendments applying to Vancouver will be incorporated in the* ***Vancouver Charter.***



It's up to you to choose

The Ministry of Municipal Affairs, Recreation and Culture has prepared this kit to help you understand and use the tools and processes offered by the proposed heritage legislation.

At first glance the legislation appears to be lengthy and complex. In fact, however, it employs some familiar tools in new ways to help communities better manage their heritage resources.

Using the tool kit

Like any tool kit, you will find it much easier to use if you first become familiar with the basics, understand the principles and how they work, and **then** select the most appropriate tools to get the job done.

This kit contains explanatory information on the proposed amendments to the legislation which, if approved by the legislature, will provide the basis for day-to-day community heritage planning and management.

☛ ***A cautionary note****: Although we have prepared this guide to help you understand the proposed legislation, each municipality and regional district* ***must*** *refer directly to the legislation and seek its own legal counsel for specific legal interpretations.*

☛ ***For further information on Heritage Legislation contact:***
Colin K. Campbell, Director
Heritage Conservation Branch
Ministry of Municipal Affairs,
Recreation and Culture
Legislative Buildings
Victoria, B.C., V8V 1X4
Telephone: 356-1434

2. Planning for heritage conservation

In the past, communities in British Columbia have had to manage their heritage resources on a piecemeal basis with limited opportunities to protect both the resources and the rights of private property owners.

The proposed legislation will provide local governments with new opportunities for heritage planning. Because the proposed legislation encourages a comprehensive and integrated approach to heritage planning, those communities which take advantage of this approach will derive the greatest benefits.

The proposed legislation will enable communities to undertake planning for their heritage resources in much the same way as they do for other community resources. Communities will be able to identify a long term vision for the management of their heritage resources, and integrate this vision into community policy documents such as the Official Community Plan. Perhaps most important, they will have the necessary tools (such as development permits and heritage revitalization agreements) with which to realize their heritage management goals.

The process

Whether you want to consider preservation of a single facade or a whole neighbourhood, the steps of the process are the same:

1. PLAN
2. CONSERVE
3. PRESENT

Tools for local governments

It is anticipated that local governments which decide to undertake heritage conservation initiatives will use all of the basic **planning tools**. These will form the foundation upon which all other conservation efforts are built.

It is also expected that local governments will use some or all of the **support tools**.

The **basic protection tools** are intended to be used in much the same way as other municipal land use control mechanisms. Not all communities will use them all, but they will be available should the need arise.

The **special purpose tools** are intended to be used only in special cases and after much consideration has been given.

Finally, the **present tools** are expected to be used frequently to enhance heritage awareness and community pride.

Tools for Property Owners

Private property owners will be encouraged to see improved opportunities for supprot and better protection of their property rights in the proposed legislation.

The **planning tools** will provide improved long term planning for community heritage resources that will result in better awareness of government intentions.

The **support tools** will provide local governments the opportunity to offer private property owners both direct financial and indirect assistance towards conservation of heritage property.

The **basic protection tools** will provide the opportunity for owners and local government to negotiate agreements and to improve the approval process for proposed changes to heritage property.

The **special purpose tools** provide mechanisms for temporary heritage protection, review of government decisions, penalties and remedies.

Tools for heritage organizations

Heritage organizations will be better able to promote community heritage goals with the proposed legislation. Because local government will have the opportunity to plan for their heritage resources in a comprehensive and integrated way, community groups will be better able to play a constructive role in developing community heritage policies.

Heritage organizations will have a particularly important role to play in the development of the official community plan heritage policies and the community heritage registry. They will continue to play an important role in the **presenting** of the community's heritage resources.

3. Developing a strategy

Communities are strongly encouraged to develop a long-term management plan for heritage conservation. All of the proposed heritage legislative tools are discretionary, and it is up to each local government to decide which tools it decides to use and how comprehensive a program it chooses to implement.

Proposed tools can be individually or in combination, depending on the particular circumstances of each case or on the needs of the community. For example, protection of a heritage landscape may require only the use of landmark tree protection, whereas a strategy for conservation of a commercial business area may use a combination of mechanisms such as establishing a Business Improvement Area, a development permit area, conservation covenants, and voluntary designations.

Larger municipalities may choose to integrate many or all of the proposed tools in conducting their day to day business. Smaller and rural communities may need to use only a few to facilitate effective conservation.

The proposed powers can be used for the conservation of many types of heritage property. We have prepared a matrix that gives quick cross-reference between the type of property and the tools that may be applied to achieve effective conservation.

Residential Property

Many proposed tools apply to heritage properties containing single family dwelling, multi-family dwellings and apartments.

Commerical / Industrial / Institutional

Most provisions apply to commercial heritage properties (such as banks, stores, offices), institutional heritage properties (such as museums, churches, post offices, schools), and industrial properties (such as factories, canneries, bridges, mines).

Natural Features

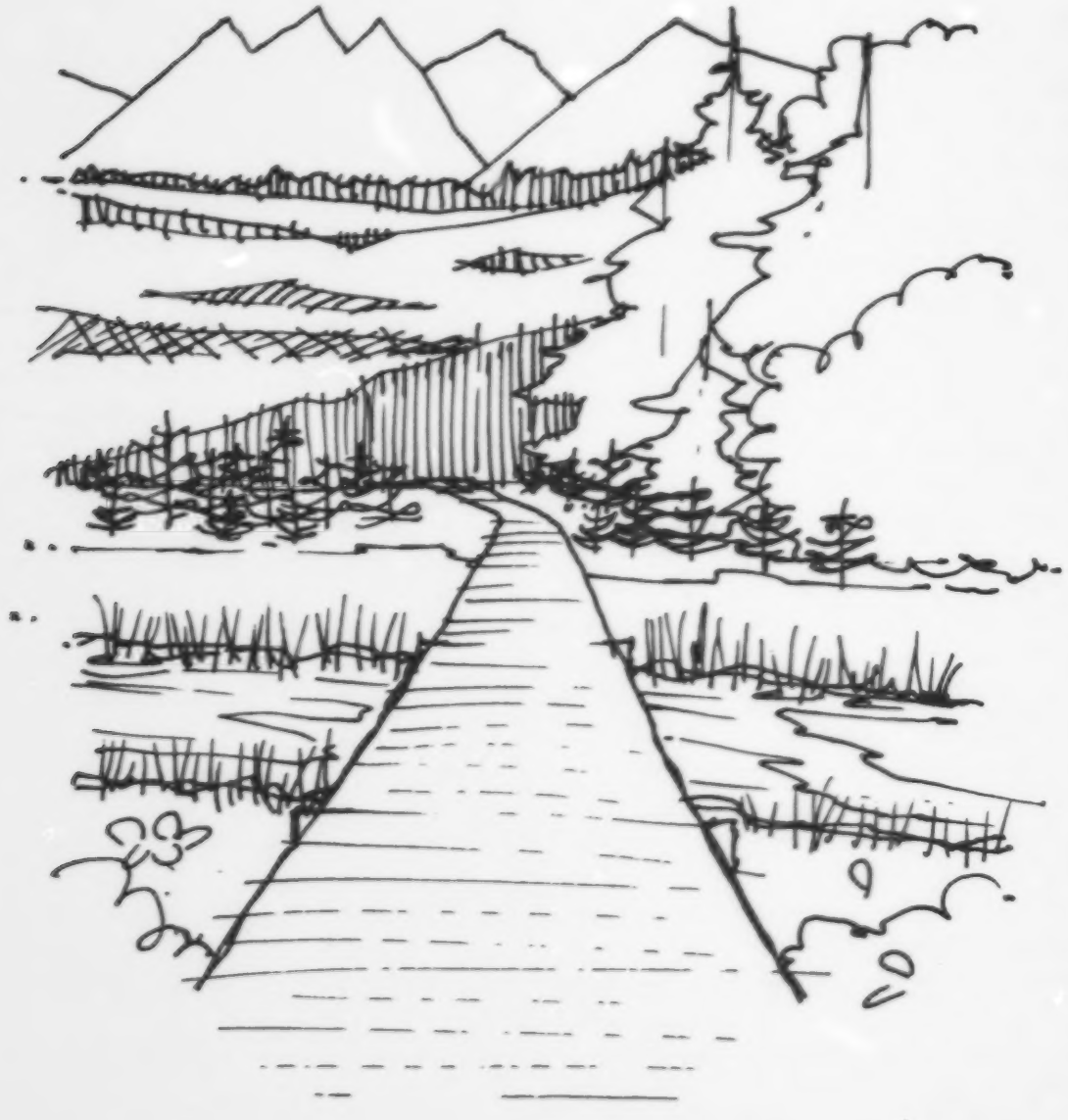
Several tools may be applied selectively to natural features such as heritage trees, landscapes, gardens parks and trails.

Municipally - Owned Properties

Some tools apply specifically to municipally-owned properties such as heritage fire halls, libraries, parks, and monuments.

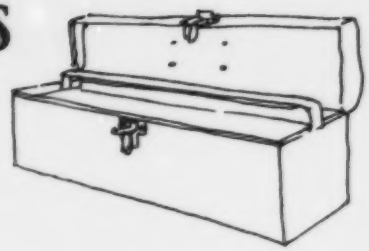
Regional Districts

Regional districts must obtain ministerial approval for establishing Local Improvement Areas and Business Improvement Areas. Otherwise, all proposed provisions listed in this guide apply to both regional districts and municipalities. Any special distinctions for regional districts are generally highlighted in the explanatory notes of this guide.



TOOLS	RESIDENTIAL PROPERTY	COMMERCIAL/ INDUSTRIAL PROPERTY	NATURAL FEATURES	MUNICIPALLY OWNED PROPERTY	MUNICIPALITIES	REGIONAL DISTRICTS
Community Heritage Commission	✓	✓	✓	✓	✓	✓
Community Heritage Registry	✓	✓	✓	✓	✓	✓
Official Community Plan	✓	✓	✓	✓	✓	✓
Direct Local Government Financial Assistance	✓	✓	✓	✓	✓	✓
Other Local Government Support	✓	✓	✓	✓	✓	✓
Tax Exemption	✓	✓	✓	✓	✓	✓
Local Improvement Area/Business Improvement Area	✓ *(LIA only)*	✓			✓	✓ *With Ministerial Approval*
Development Permit & Development Permit Area	✓	✓		✓	✓	✓
Local Government Heritage Designation	✓	✓	✓	✓	✓	✓
Conservation Covenant	✓	✓	✓		✓	✓
Heritage Revitalization Agreement	✓	✓	✓		✓	✓
Reservation & Dedication of Heritage Property				✓	✓	✓
Landmark Tree Protection	✓	✓	✓		✓	✓
Temporary Heritage Protection	✓	✓	✓		✓	✓
Heritage Impact Assessment	✓	✓	✓		✓	✓
Heritage Inspection	✓	✓	✓		✓	✓
Heritage Site Maintenance Standards	✓	✓	✓	✓	✓	✓
Review Process	✓	✓	✓		✓	✓
Injunctions, Remedies & Penalities	✓	✓	✓		✓	✓
Acquisition & Expropriation	✓	✓	✓		✓	✓
Present	✓	✓	✓		✓	✓

4. The Tools



PLAN

Community heritage commission 9

Community heritage registry 10

Official community plan 12

CONSERVE

Support

Direct local government financial assistance 13

Other local government support 14

Tax exemption 15

Local improvement area/business improvement area 16

Basic Protection

Development permit and **Development permit area** 18

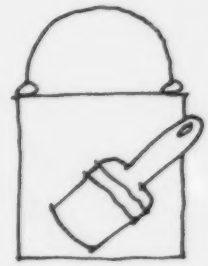
Local government heritage designation 20

Conservation covenant 21

Heritage revitalization agreement 22

Reservation and **Dedication of heritage property** 23

Landmark tree protection 24



Special Purpose

Temporary heritage protection 25

Heritage impact assessment 26

Heritage inspection 27

Heritage site maintenance standards 28

Review process 29

Injunctions, remedies and **penalties** 30

Acquisition and **expropriation** 31

PRESENT

Organization 32

Public awareness 32

Marketing

Promotion

Interpretation 32

Recognition 32

☛ *In 95% of cases, communities will use the **planning, support** and **basic protection** tools in undertaking local conservation initiatives.*

*The **special purpose** tools are intended to be used ONLY in special cases.*

Community heritage commission

What is it?

A **community heritage commission** is a body appointed by local government that

1) is responsible for **advising local government** on heritage issues in the community, and

2) may, if authorized, undertake projects or implement programs.

Purpose

A **community heritage commission** is intended to advise a council or a regional board on heritage matters and to undertake activities included in the commission terms of reference.

Proposed Legislation	Previous Legislation
■ ***Broadens possible activities*** *of community heritage commission beyond advising council or regional board to include:* • *implementing programs* • *raising funds* • *preparing applications and reports* • *promotion and public awareness*	■ *Heritage committees restricted to an advisory role*
■ *Exercising any other* ***powers or duties delegated*** *by a council or regional board, including review of development permits or designations*	
■ *Local government or regional district* ***may have more than one community heritage commission*** *in the municipality or regional district*	■ *Limited to one advisory heritage committee per municipality*

Process

1 **Local government establishes the community heritage commission** by bylaw, which must include the commission's terms of reference, authorized duties, membership, procedures, and funding.

2 Local government generally appoints a **council representative** and assigns **staff** liaison and support to the community heritage commission.

3 **Commission** plans its activities and prepares a budget.

4 **Commission** undertakes business activities and **reports to council or regional board** according to its terms of reference.

Considerations

■ Local government should carefully consider the **membership** of the commission to ensure broad representation of the community's interests, skills, and talents.

■ As well as the community heritage commission local government may opt to establish a **non-profit society** that may raise funds and take on responsibility for additional community heritage activities.

■ Local governments should consider carefully the appropriateness of any delegation of programmatic authority to a community heritage commission.

Legislative references

67. [*Municipal Act* Sec. 741.4]

Community heritage registry

What is it?

A **community heritage registry** is an official **listing** of properties and/or objects deemed by local government to have sufficient heritage value to "flag" possible future preservation.

Including a property or object on a community heritage registry **DOES NOT** give it heritage protection, and is NOT the same as designation. It may, however, be a pre-requisite step for using some of the conservation tools, including:

- financial assistance
- withholding of demolition permits

Proposed Legislation

- *By resolution, local government **identifies heritage properties** to be included on a **community heritage registry***
- ***Registry status** is recorded as a **notation on the land title** of the property*
- *Local government may choose to **make eligibility for support** such as grants, loans, design assistance or other direct or indirect support contingent on a property being listed on the community heritage registry*
- *Before a **demolition permit** can be obtained for heritage registry properties, local government may first require that a **building permit** be issued. This is intended to ensure that prior approval of the proposed development is given before demolition occurs*

Previous Legislation

- ***Community heritage registries** not specifically authorized*

Purpose

A community heritage registry is intended to:

1) **officially recognize the heritage resources** identified in a community heritage inventory.

2) provide a list that enables **review and monitoring** of proposed changes to properties with heritage value.

3) **encourage proposals** for sensitive rehabilitation, and

4) **give fair notice** to property owners of heritage factors that **may** affect future development options for the property.

Process

1 Community heritage resources are **researched and identified**, usually in a heritage inventory.

2 Resources which meet the local government **selection and assessment standards** for heritage properties are proposed for inclusion in the **community heritage registry.**

3 As part of the heritage management process, local government should anticipate the **continuing need** to provide information and to raise awareness:

- prepare clear and simple **information packages**, especially to explain that registry status is **not** designation status
- prepare a map to place the individual heritage property in the **context** of the street, neighbourhood or area
- **assemble available information**, such as before and after restoration photos, maps, archival materials, inventories, etc.
- **hold review meetings** or **workshops**
- offer **technical assistance**, such as design advice or rehabilitation standards

4 Local government notifies property owners to explain its intentions and the purpose of the **community heritage registry.** The community heritage commission or staff may meet with property owners to

answer questions, clarify any confusion, discuss concerns and review possible options.

5 By resolution, a council or regional board creates a **community heritage registry** and includes appropriate properties and/or objects on it.

6 Within 30 days of a property being **added** to or **deleted** from a **community heritage registry,** local government must notify the following agencies of the changes to the registry:

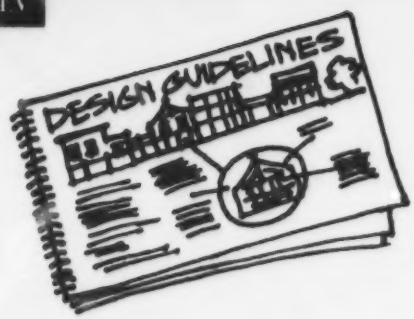
- property owner
- Provincial Heritage Registry (Ministry of Municipal Affairs, Recreation and Culture)
- Land Title Office

Considerations

- **Community heritage registries** should list **ALL** properties which a local government wishes to formally recognize as having heritage value.
- Registry status is **NOT** the same as heritage designation; registry status is simply a recognition of heritage value and does **NOT** ***in itself*** provide a commitment to future protection or preservation.
- Property owners or the public may have some initial confusion and misconceptions about heritage registry status (particularly with reference to designation) that may require steady public education efforts to clarify.

Legislative references

67. [*Municipal Act* Sec. 741.5, 741.9, 741.92]



Official community plan

What is it?

Adopted by bylaw, an **official community plan (O.C.P.)** is a document describing the community's general **statement of broad objectives and policies.**

The **O.C.P.** contains **written and graphic information** outlining a council's or regional board's policies regarding the **form and character** of existing and proposed land use and servicing requirements in the area covered by the plan.

Purpose

The purpose of an **O.C.P.** is to state the broad objectives and policies for **heritage conservation** in the community. Specifically, the **O.C.P.** may **outline standards and policies for identification** of heritage properties to be included on the **heritage registry**.

An **O.C.P.** may also identify:

1) **heritage development permit areas**; supporting design guidelines for development permit areas may be appended to the official community plan.
2) **long term land use** that may affect the conservation or development of heritage areas.
3) **provincially protected** heritage sites.

Proposed Legislation	Previous Legislation
■ *If used, requires identification of* ***heritage development permit areas*** *in the O.C.P.*	■ *Use of development permit areas for heritage conservation limited*
■ *Properties* ***provincially protected*** *under the* ***Heritage Conservation Act*** *may be identified in a schedule (map) to the O.C.P.*	■ *No specific provision for identification of heritage sites*

Process

1 Local government proposes to amend the **O.C.P.** to:
- include heritage **conservation goals and objectives**
- include **policies or standards for the selection and assessment of heritage property**
- identify **heritage development permit sites and areas.** Heritage development permit sites and areas are identified on the schedules attached to the **O.C.P.**
- identify provincially protected heritage sites if applicable

2 As amendments to the **O.C.P.** are accomplished by bylaw, they require a **public hearing** and four readings of council.

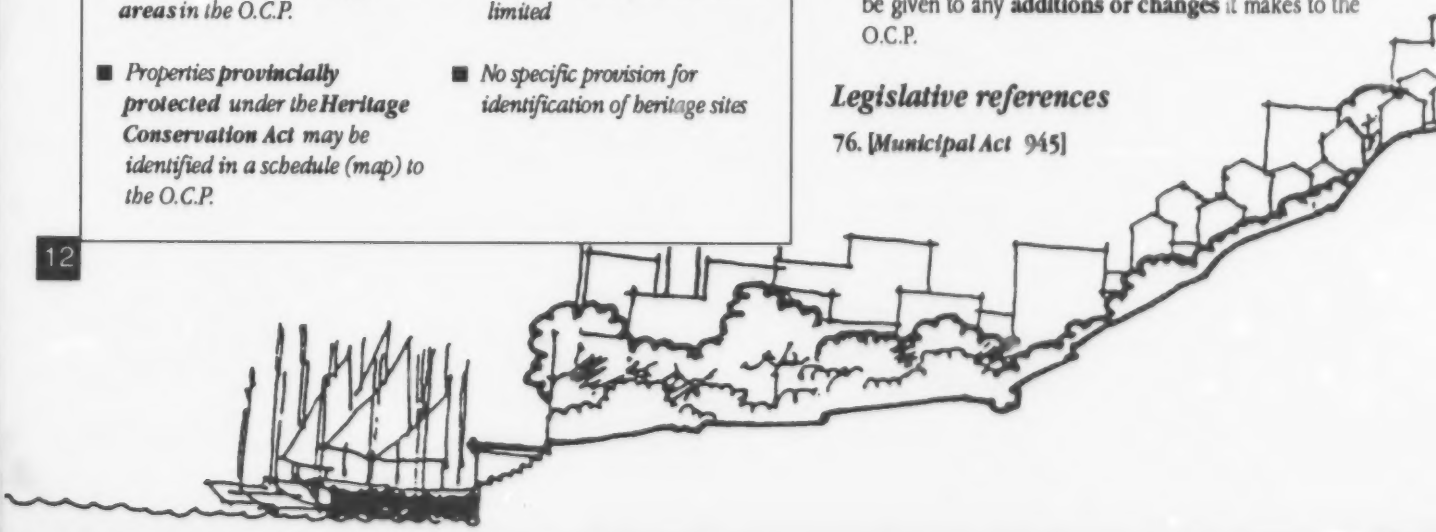
3 If amendments are adopted by council the **O.C.P.** is revised or amended to reflect the changes.

Considerations

- Long term community **heritage conservation goals, objectives** and **land use** implications should be carefully defined, preferably in consultation with the community through public workshops or meetings.
- Local government should consider whether or not it wishes to include **heritage design guidelines** for development permit areas as part of the O.C.P.
- Because local governments may not enact bylaws, give approvals or undertake activities which conflict with the policies in its O.C.P., careful consideration should be given to any **additions or changes** it makes to the O.C.P.

Legislative references

76. [*Municipal Act* 945]



Support

Direct local government financial assistance

What is it?

Local government financial assistance is **direct funding to public or private property owners** enabled by resolution of a council or regional board for the purpose of conservation of heritage property.

Direct funding by local government can take the form of **outright grants or loans**, and must be **directly related to expenditures for conservation**.

Purpose

This mechanism is intended to provide local governments with the opportunity to invest in the community's heritage and to **assist property owners** in the conservation of heritage properties.

Proposed Legislation	Previous Legislation
■ *Allows local governments to provide **direct funding to private property owners** for the conservation of heritage property*	■ *Direct financial assistance prohibited - funding only available through a third party (such as a non-profit society)*

Process

1 Property owners and local government **express interest in establishing a program for financial assistance** to public or private properties for heritage conservation.

2 Council or regional board passes a resolution (by simple majority) to establish a **program for financial assistance**. This program should outline the criteria for funding eligibility, applications, approvals, process, source of funds, method of distribution, long-term protection methods, and program administration. Program administration may be delegated to the **community heritage commission**.

3 **Mechanism for funding source is created** (i.e. through general budget, grants-in-aid or endowment). Approval for allocation of local government funds requires a 2/3 majority of a council or regional board.

4 Options for **protection of the financial assistance** are reviewed with property owner and the appropriate legal protection is put in place:

- designation
- development permit
- heritage revitalization agreement
- conservation covenant

5 Property owners **apply for funding** with cost estimates and design drawings showing proposed conservation work.

6 Applications are usually reviewed by staff and the **community heritage commission** for recommendation to council. **Funding approval** is given by the council or regional board.

7 Works are **performed by the property owner and inspected by local government** to ensure that agreed work has been satisfactorily completed.

8 **Funding is disbursed to property owner** as agreed.

Considerations

■ Possible **long term commitments should be thought out in advance**, including **protection mechanisms** and how the property will be **maintained** after improvements are made.

■ Local governments that do not wish to establish a direct support relationship with heritage property owners should consider a **local society** to carry on this responsibility.

■ It is always wise to record decisions and agreements in writing, especially when public monies are disbursed.

Legislative references

50. [*Municipal Act* Sec. 269.2]
72. [*Municipal Act* Sec. 789]

Support

Other local government support

What is it?

In addition to direct financial support, local governments may provide **indirect support** to owners of heritage properties. Indirect support may be provided in the form of support services including:

- program coordination
- funding of a non-profit community heritage society
- government staff time
- research and information
- public works projects
- design and engineering assistance
- graphics
- signage and interpretation
- event sponsorship
- marketing and promotion

Purpose

The purpose of local government support other than direct financial assistance is to:

1) enable communities which lack the financial resources to provide other assistance to owners of heritage property, and

2) provide types of assistance which in many cases are more effective than direct financial support.

Proposed Legislation	Previous Legislation
■ *Enables local government to* ***provide assistance*** *to owners of property*	■ *Local government unable to provide assistance to heritage businesses*

The Process

1 Property owners and local government **express interest** in establishing a support program for heritage properties

2 The **needs** of heritage property owners **are identified.**

3 Alternative **support mechanisms** are explored (i.e., design assistance or public works projects).

4 **Support program is detailed** including eligibility criteria, program management, staff coordination and budgeting.

5 Program is **implemented.**

6 Program is **monitored.**

Considerations

The **needs of heritage property owners** should be carefully assessed, and any support program should be tailored to meet those needs.

- Budgeting and costs for **staff coordination time** should be clearly identified.
- Support programs should be **monitored** for effectiveness and adjustments should be considered as time goes on.

Legislative References

50. [*Municipal Act* Sec. 269.2]
51. [*Municipal Act* Sec. 270.1]
52. [*Municipal Act* Sec. 279.1]
72. [*Municipal Act* Sec. 789]

Support

Tax exemption

What is it?

Tax exemption is a support mechanism that allows a council or regional board to give property owners a partial or total exemption on their **property taxes for approved heritage conservation purposes** if the property is protected by:

- designation (provincial or local)
- development permit
- conservation covenant
- heritage revitalization agreement

A tax exemption may be in effect for a period **not to exceed 10 years**. The exemption may apply to **all** or **part** of the taxes applicable to the property.

Purpose:

The purpose of tax exemptions is to provide a **financial incentive to private property owners** to conserve and/or to restore their heritage properties.

Proposed Legislation	Previous Legislation
■ *Specifically allows partial or total tax exemptions for a* ***maximum 10 year period*** *for heritage properties which are the subject of a heritage development permit, designation, conservation covenant, or revitalization agreement*	■ *Limited to* ***a 1 year exemption*** *except with the assent of the electors*
■ *If the exempt property is destroyed or altered without proper authorization, the local government may require* ***repayment of the exempted tax*** *monies from the property owner*	
■ *An amendment to the* ***Assessment Act*** *will ensure that heritage protection status is considered in the assessment of the property*	

Process

1 Local government and property owners **express interest in property tax exemption program**.

2 Criteria for **tax exemption eligibility** is defined by local government, including terms, expected improvements or conditions, methods of legal protection, rate and period of exemption.

3 **Properties** eligible for tax exemption are **identified** by local government; property owners are notified and consulted.

4 By bylaw and 2/3 vote of council, local government **exempts properties from all or part of tax levy.**

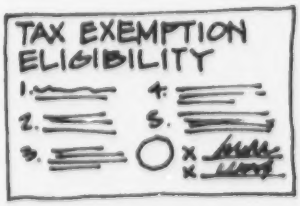
5 The tax exempt properties are **monitored by local government** for the period of tax exemption to ensure that each conforms with the agreed terms of the heritage protection and any requirements for rehabilitation.

Considerations

- **Impact of potential costs and benefits** to the local government tax base (i.e., direct costs to implement vs. benefits of conservation to community) should be considered.
- Consider **alternate forms of support** (i.e., direct grants or indirect support such as design assistance).
- **Terms and proportion** of the taxes to be exempted should be carefully thought out in advance and should **relate directly** to the conservation investment expected of the owner.
- Implement a method of monitoring and evaluating the **effectiveness** of a tax exemption program.

Legislative references

54. [*Municipal Act* Sec. 400.1]
75. [*Municipal Act* Sec. 819.2]



Support

Local improvement area/business improvement area

What is it?

Defined by bylaw, a **local improvement area** (L.I.A.) specifies public or private properties in a district (business, industrial, residential), from which **funds are levied** to contribute to a **public physical works project** of common benefit. L.I.A.'s may be used for the purposes of conservation of **public heritage property** in addition to their common uses (i.e., construction of sewers and sidewalks). L.I.A. funds are **collected** AND **managed** by municipal government.

Local improvements are the actual **physical works** on public lands undertaken by a local government.

Defined by a bylaw, a **business improvement area** (B.I.A.) specifies public or private properties in a **municipal, business or industrial district** from which **funds are levied** to contribute to **public projects** of common benefit:

- **physical works** (beautification projects, streets and sidewalks constructed on municipally owned land, buildings, or structures)
- **studies** or **reports**
- encouragement of **business** (marketing, promotion or advertising)

B.I.A.'s may also be used for the purposes of conservation of **public heritage property**.

B.I.A. funds are **collected by municipal government** and are directly **managed by a management board** made up of property and business owners in the area (for more information on B.I.A.'s, see *An Introduction to Business Improvement Areas* published by the Ministry of Municipal Affairs, Recreation and Culture).

Generally, use of L.I.A.s and B.I.A.'s is only available to municipal governments. Regional districts must make special application to the Ministry of Municipal Affairs, Recreation and Culture to receive approval to undertake a L.I.A. or B.I.A..

Proposed Legislation	Previous Legislation
■ *Allows the use of **local and business improvement areas** for the conservation of public heritage property*	■ *Previously unclear*

Purpose

L.I.A.'s and B.I.A.'s enable communities to **collect funds** from properties included in defined areas to enable conservation of **public heritage property.** L.I.A. and B.I.A. projects also enable property owners who benefit from public heritage improvements to contribute financially to them.

Process

1 Property owners and local government **express interest in establishing a L.I.A.** or **B.I.A.** heritage project.

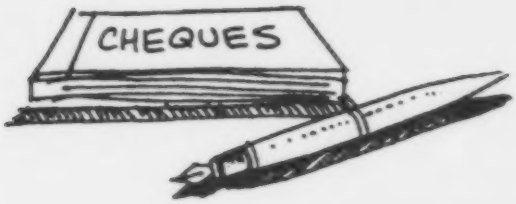
2 In either case, the L.I.A. or B.I.A. **project plan is detailed,** including the defined area, projected costs, pay back period, levy method (i.e. assessment, frontage, or parcel tax) total value of properties in area, works to be performed, and approvals schedule. In addition, B.I.A.'s require the establishment of a management board and budgets for the period of the levy which may be up to 5 years.

3 The **L.I.A.** or **B.I.A. bylaw** is proposed by a **council**.

4 Local government undertakes a **council initiative** OR property owners **petition** in support of a L.I.A. or a B.I.A. bylaw:

- **Initiative** requires a simple majority resolution of council to notify affected property owners of its intention to proceed with the local improvement area project and levy.
- Property owners have one month after publication of the notice to respond. If 50% of the owners (representing at least 50% of the total property value in the area) petition against the notice, then council cannot proceed. If less than 50% respond, council may proceed with a local improvement area bylaw and levy.
- **Petition:** A request from at least 2/3 of the affected property owners (must represent at least 50% of the total property value in the area) to council for a local or business improvement area project and levy. Council adopts a local or business improvement area bylaw and levy.

5 B.I.A. or L.I.A. **funds are collected** and **works are done** by local government. In the case of a B.I.A., the



collected funds are turned over to a management board.

Considerations

L.I.A. and B.I.A. bylaws require an **initiative** of council or a **petition** of property owners in support of the proposal.

- Both the initiative and petition processes require a significant amount of time to complete. **Allow 6 months to a year** to create a L.I.A. or B.I.A.
- Local and business improvement areas require **owner commitment, cooperation and coordination** (usually by a paid or volunteer coordinator).
- Funds raised through L.I.A. or B.I.A. may only be used for works undertaken on **public property.**

Legislative references

49. [*Municipal Act* Sec. 269.1]
existing [*Municipal Act* Sec. 790]

Basic Protection

Development permit & development permit area

What is it?

A heritage **development permit area** is an area identified in an **official community plan** by a municipality or a regional district for the purposes of **conservation and rehabilitation** of heritage properties. Owners of properties in development permit areas must apply to local government for a **development permit** to undertake most works significantly affecting the fabric of existing structures or for new development.

A **development permit** is a mechanism commonly used by local government to regulate development on a site, including the terms and conditions under which development may proceed. If a property is identified as a **heritage development permit site,** proposed changes to the site must meet the specified terms and conditions (e.g. design, construction standards) before receiving a **building permit**.

The *Municipal Act* allows for local government to adopt **design guidelines** regarding building form and character for heritage development permit sites or areas. Heritage property owners *may* be required to comply with design guidelines as a condition of obtaining a development permit.

Proposed Legislation	Previous Legislation
■ *Creation of development permit areas is* ***not contingent*** *on the heritage designation of any properties in the area*	■ *Enabled heritage development permit areas, but required a* ***heritage designation*** *of one or more properties within the area.*
■ *Key heritage properties within the development permit area may be* ***"listed"*** *within the amendment to the O.C.P.*	
■ *Development permits can be readily applied to* ***residential areas***	
■ *Applicable to all types of sites including* ***commercial, industrial, multifamily and single family dwellings***	■ *Use in* ***residential areas*** *strictly limited*

Purpose

The purpose of **heritage development permit areas** is to give a council or regional board the ability to **regulate development** in areas which the council or regional board recognizes as having special heritage characteristics.

Process

1 Heritage resources are **identified** usually in an inventory.

2 Resources are listed on **community heritage registry**.

3 A **development permit area** is established (by bylaw) in the **official community plan**.

4 Development permit **design and conservation guidelines** are prepared, if applicable, and can be appended to the official community plan.

5 Property owner applies to local government for a **development permit** and **building permit** indicating work to be undertaken (meeting design guidelines and the terms of the development permit area).

6 **Development permit** proposal *may be* reviewed by the **community heritage commission** to ensure that it meets design criteria.

7 **Development permit** and **building permit** approved by council, regional board, or delegate and issued.

8 **Work undertaken** by property owner and **inspected** by local government.

9 The development permit property is **monitored** by local government.

10 Any **changes** to a development permit site **must have the approval of** council, regional board or designate.

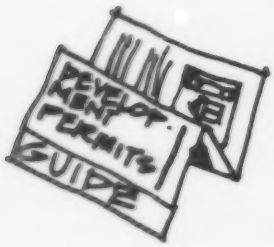
11 A heritage property protected by a development permit **may be altered** by resolution of council, regional board, or by the written approval of a delegate enabled by a delegation bylaw.

Considerations

Development permits are a good tool for **areas** that include a concentration of heritage buildings or structures.

■ Development permits are well understood and easily

- Development permits are well understood and easily used by local governments and are often the **preferred alternative** to heritage designation.
- Areas selected as heritage development permit areas should have **compatible zoning** (i.e., not zoned for significantly higher density than the current use).
- While authority to approve development permits may be delegated, a council or regional board **remains accountable** for the decisions of the delegate.



Legislative references

76. [*Municipal Act* Sec. 945]
83. [*Municipal Act* Sec. 976]
67. [*Municipal Act* Sec. 741.2]

Basic Protection

Local government heritage designation

What is it?

Heritage designation is a **special recognition** and **legal protection** given to properties by a local government bylaw. A designated property **(building, structure or land)** may not be **altered or demolished** without the prior consent of council or regional board. Compensation for designation by local government is required where loss of property value can be proven as a direct result of designation.

Designation may apply to **exteriors** and to **interior features** that are specified in the bylaw.

The scope of local government heritage designation differs from provincial government heritage designation empowered under the *Heritage Conservation Act.*

Purpose

Local government designation is intended to give **long term protection** to heritage properties.

Proposed Legislation	Previous Legislation
■ *Designation may apply to **buildings, structures or land** including landscape features and building interiors*	■ *Designation only applied to buildings and structures*
■ *Designation can be used to control alterations to **exteriors** and **interiors** of structures*	■ *Control of alterations restricted to **exteriors** of structures*
■ ***Compensation required** for loss of value resulting from designation*	■ *Compensation requirements unclear*
■ *Designation status is noted on the land title*	■ *No notation on land title required*
■ *Broad protection for property owners*	■ *Limited protection for property owners*

Process

1 Heritage resources are **identified**, usually in an inventory.

2 Generally, properties to be designated will be listed on a **community heritage registry.**

3 Each community establishes its own procedures for approving bylaws that change the use, density or heritage designation status of a property. These procedures are laid out in local government's *Procedure Bylaw.* These procedures will normally include:

- readings of the **bylaw** by council
- delivery of **notices** to property owners
- holding of a **public hearing** for property owners

4 Special provisions in the *Municipal Act* pertaining to heritage designation bylaws are made for property owners, including requirements for:

- municipality to **prepare and deliver a report** for proposed designation to property owners prior to designation
- **notification** to property owners of adoption of the bylaw

5 A heritage property protected by local government heritage designation may be altered by resolution of council or regional board or by the written approval of a delegate enabled by a delegation bylaw

Considerations

- Requires **compensation** for proven loss of property value which results from the designation.
- If an agreement on compensation cannot be reached between the property owner and local government, the amount of compensation (if any) shall be determined through binding arbitration under the *Commercial Arbitration Act.*
- Designation status may be **applied** AND **removed** by a simple majority vote of council.

Legislative references

67. [*Municipal Act* Sec. 741.94; 741.95] existing [*Commercial Arbitration Act*]

Basic Protection

Conservation covenant

What is it?

A **conservation covenant** is a **contract** or an **agreement** between a local government and a heritage property owner that is adopted by bylaw and is registered on the property title. It outlines the **respective responsibilities** of the conservation covenant parties for the conservation of a heritage property. Conservation covenants may **NOT** vary local government regulations such as **siting, use or density**.

Conservation covenants can apply to **natural** or **man made heritage resources.** Normally a conservation covenant will be between a private property owner and:

- the Province, or
- a local government, or
- a conservation organization (with Ministerial approval).

Purpose

Conservation covenants allow local governments to **negotiate agreements** with property owners to be used to **protect a site or a building**.

Because conservation covenants are **registered on the property title** at the Land Title Office, future purchasers are made aware that the property has special heritage features.

Proposed Legislation	**Previous Legislation**
■ *Authority for conservation covenants is in the **Land Title Act***	■ *Enabled under the **Heritage Conservation Act***
■ *Conservation covenants provide a solid form of protection by **mutual agreement***	
■ *A conservation covenant may be held by a **heritage organization** as well as by local government or the Province*	■ *A conservation covenant could only be held by local government, the province or the British Columbia Heritage Trust*

Process

1 Community **identifies heritage properties** to be protected, usually in an inventory.

2 **Conservation covenant is selected** as the appropriate tool after other protection tools such as heritage revitalization agreements or development permits are considered.

3 Terms of the conservation covenant are **negotiated** by local government and the property owner(s).

4 Conservation covenant **adopted by** bylaw of local government.

5 Conservation covenant is **registered on property title** in the Land Title Office.

6 Property is **monitored** for compliance with the terms of the conservation covenant.

Considerations

- Conservation covenants are **voluntary agreements** that emphasize partnership in heritage stewardship.
- Conservation covenants are a good tool for unique and special situations where a custom designed agreement will ensure **long term** protection of the property. The conservation covenant "runs with the land" which means that if the property is sold the conservation covenant is also "sold" to the new property owner at the same time.

Legislative References

47. [*Land Title Act* Sec. 215.1]

Basic Protection

Heritage revitalization agreement

What is it?

A **heritage revitalization agreement** (H.R.A.), adopted by a bylaw, is a voluntary written agreement negotiated by a property owner and local government that defines the **respective responsibilities** of the owner and the local government with regard to the conservation of heritage property that is listed on a community heritage registry or is protected by:

- designation
- heritage development permit area
- provincial designation under the *Heritage Conservation Act*

Heritage revitalization agreements differ from conservation covenants in that they allow for variances of local government regulations and bylaws including **siting, use and density.**

Purpose

Heritage revitalization agreements provide additional **flexibility** to both property owners and to local government to design and to write the terms of the agreement.

Local government may provide terms in a heritage revitalization agreement that enable a property to be **eligible for public funding** or other assistance.

Proposed Legislation	Previous Legislation
■ *Allows for **variances** to local government regulations **including siting, use and density***	■ *No comparable power*
■ *Expands the powers of local government to **negotiate** directly with heritage property owners*	

Process

1 Local government and property owner **negotiate terms** of the heritage revitalization agreement in conjunction with other tools if applicable.

2 A heritage revitalization agreement **bylaw is drafted.**

3 Council **adopts the bylaw** (following a **public hearing** if required).

4 The heritage revitalization agreement is **registered on the property title** with the Land Title Office.

5 A heritage property protected by a heritage revitalization agreement, may be altered by resolution of council or regional board or by the written approval of a delegate enabled by a delegation bylaw.

Considerations

- Heritage revitalization agreements may only be entered into **voluntarily.**
- This is a good tool to allow creative conservation solutions and flexibility for both property owners and local government.
- If a heritage revitalization agreement changes the **use or density** of a property, a **public hearing** is required prior to adoption of the agreement bylaw.
- If a heritage revitalization agreement proposes to vary a bylaw which concerns **flood plain elevations,** approval by the Minister of the Environment is required.
- If a heritage revitalization agreement concerns property subject to Sec. 57(2) of the *Highway Act,* approval of the Minister of Transportation and Highways is required.

Legislative references

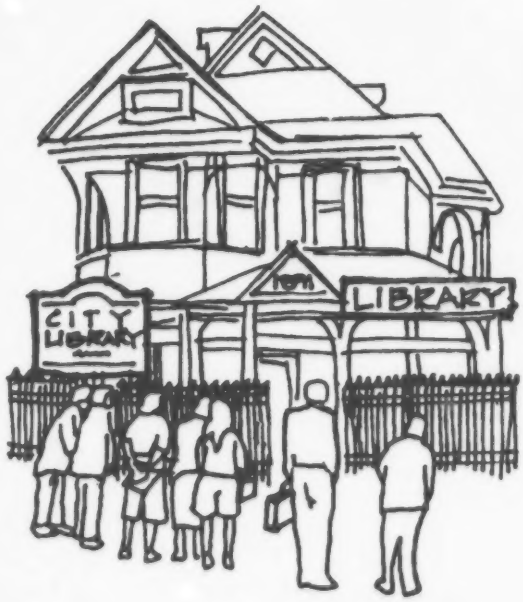
85. [*Municipal Act* 982.1]
67. [*Municipal Act* 741.2]

Basic Protection

Reservation and dedication of heritage property

What is it?

Reservation and dedication of heritage property is the power of local government to set aside **public land** or **heritage property** for a municipal or public purpose.



Purpose

Reservation and dedication may give long term conservation protection (stronger than designation) to **publicly owned** property. This mechanism could be used to protect public heritage properties such as cenotaphs, historic trails, statues, city halls or parks.

Proposed Legislation	Previous Legislation
■ *Permits the reservation and dedication of* ***publicly owned*** *heritage properties*	■ *No specific mention of the reservation or dedication of heritage property*

Process

1 A **community strategy** is developed and public property to be reserved is **identified.**

2 Local government adopts a **bylaw to reserve** a heritage property (passed by simple majority).

3 A 2/3 vote of council or regional board, provincial Ministerial approval, and application to the Supreme Court is required to **remove** the reservation status on heritage property.

Considerations

■ This tool **applies ONLY to public properties** such as parks, trails, public buildings and monuments. It can be used to express a more substantial public commitment to the conservation of a publicly owned heritage resource.

Legislative References

59. [*Municipal Act* Sec. 532]
60. [*Municipal Act* Sec. 533]
72. [*Municipal Act* Sec. 789]

Basic Protection

Landmark tree protection

What is it?

Landmark tree protection is a mechanism (enabled by bylaw) that outlines criteria for the identification of heritage trees and identifies specific heritage trees to be conserved.

In order to establish a landmark tree permit area, the conservation of heritage trees must be included as an objective in the **official community plan** and the heritage trees within the area must be identified in a **community heritage registry.**

A **landmark tree bylaw** is a mechanism which may be used by local government to control actions or activities which may threaten selected prominent trees in the community.

Purpose

The purpose of landmark tree protection bylaw is to provide local governments with the ability to **conserve and manage** their heritage tree resources.

Proposed Legislation	Previous Legislation
■ *Permits the protection of landmark heritage trees*	■ *No mechanism available to protect trees as heritage resources*

Process

1 Local government includes conservation of heritage trees as an objective in their **official community plan.**

2 Local government includes heritage tree resources on their **community heritage registry.**

3 Local government (by bylaw) establishes a **landmark tree permit area** and establishes criteria for the identification of heritage trees in the bylaw. The bylaw must also identify those activities and actions which may damage or destroy the heritage trees and for which a **landmark tree permit** is required.

4 Upon application by an owner, local government may issue or refuse to issue a permit for a regulated activity.

Considerations

- Local government CANNOT use landmark tree permit area or landmark tree permits to restrict **forestry activity** on land that is classified as a tree farm or is located within a *Forest Act* licence area.
- If a tree causes a threat to **health, safety or property**, local government may NOT use a landmark tree permit to protect the tree.
- Local government may **NOT** deny the legal **development or use of land** by refusing to issue a landmark tree permit.
- **Criteria for identification** of heritage trees may vary from one landmark tree permit area to another.

Legislative References

84. [*Municipal Act* Sec. 978.1]
existing [*Municipal Act* Sec. 943(2)]

Special Purpose

Temporary heritage protection

What is it?

Temporary heritage protection tools are mechanisms that allow local government time to review a threatened heritage property to:

- assess the proposed changes to the property
- undertake a study of the property
- enact a bylaw

Temporary protection measures may be used in cases where a property is included on a **community heritage registry** or where, in the opinion of a local government, the property has **heritage value.**

Various forms of temporary protection are made available to suit different circumstances, including:

- **withholding of approvals** until the next meeting of a council or regional board
- a **sixty day period** to enable consideration of conservation alternatives
- a **sixty day period** if a designation or development permit area is under consideration by local government
- a **one time control period** of one year to enable heritage planning area
- the ability to require owners of heritage registry properties to obtain a **building permit** or **development permit** PRIOR to issuance of a demolition permit.

Proposed Legislation	Previous Legislation
■ ***temporary withholding** of permit approvals*	■ *limited ability to withhold permit approvals*
■ ***60 day temporary protection** period to consider conservation alternatives*	■ *30 day temporary protection period to consider conservation alternatives*
■ ***60 day temporary protection** period if a **designation** or **development permit area** bylaw is introduced*	■ *60 day temporary protection period if a designation bylaw is introduced*
■ ***one-time 1 year control** period for area heritage planning*	■ *no planning control period*

Purpose

Temporary protection measures are intended to **allow time for local government to assess** individual circumstances and/or the community's long term conservation policies.

Process

1 Local government may, **by resolution,** enable the appropriate municipal officials to **withhold approval of a permit or license** until the next meeting of a council or regional board if, in the opinion of the official, the approval would cause a property listed on **a community heritage registry** to be affected.

2 Local government may, **by resolution**, provide a **60 day temporary protection period** for the consideration of conservation alternatives.

3 Local government may, **by resolution**, provide a **60 day temporary protection** period if a **designation** or **development permit area bylaw** is introduced.

4 Local government may, **by resolution**, provide a one-time **one year heritage control period** for area heritage planning.

5 Council may, **by resolution**, require owners of **heritage registry** properties to obtain a **building permit** or **development permit** PRIOR to issuance of a demolition permit.

Considerations

- Use of temporary protection measures (particularly withholding of permit approvals) should only be considered where there is an **imminent threat** to the property.
- The one year control period may only be used ONCE for an area, so its use should specifically focus on planning and implementing of conservation policies.

Legislative References

67. [*Municipal Act* Sec. 741.91, 741.92, 741.93 and 741.97]

Special Purpose

Heritage impact assessment

What is it?

Heritage impact assessment is a process that provides council or regional board with important decision-making information regarding the **potential effect of proposed development** on a heritage property protected by:

- designation
- development permit
- provincial protection under the *Heritage Conservation Act*

Purpose

Heritage impact assessment is intended to provide local governments with the necessary information to assess the merits of development proposals prior to issuing approvals for work to proceed.

Proposed Legislation	Previous Legislation
■ *Permits local government to request information on the **effects of proposed actions on protected properties***	■ ***No provision** for requesting impact studies*
■ *Permits local government to **assign a designate** (usually a community heritage commission or staff) to supervise a heritage impact assessment*	
■ *Requires **prompt completion** of the heritage impact assessment*	

Process

1 Property owner applies for a **building or development permit, licence or other approval.**

2 Local government (or its designate) determines that the **proposed actions might alter** or cause alteration to a protected heritage property.

3 Local government (or its designate) may require that the **property owner provide information** at his/her expense on the potential impact of the proposed action prior to further consideration of the application.

4 **Local government requests a heritage impact assessment study** from the property owner. The request must be written and must include the study specifications, information required, and the qualifications of the persons undertaking the study. These specifications may **not** be subsequently changed without the written agreement of the applicant.

5 **Applicant engages a consultant to complete the assessment study** and delivers it to a meeting of local government (or its designate).

Considerations

- Local government (or its designate) should give serious consideration to the potential **costs and benefits** of the study before requesting a heritage impact assessment.
- If a heritage impact assessment study is requested, its **specifications must be clear** and detailed. Local governments should be as specific as possible regarding information they require from the study. *For example:*
  - *impact of shadows on a protected building and landscape*
  - *increase in estimated traffic in a protected neighbourhood*
  - *potential of destabilization resulting from excavation of a hill side on which a protected building sits*
- Specifications for the heritage impact assessment may not be changed by the local government without the consent of the applicant.
- The quality of the heritage impact assessment study depends in large part on the **abilities of the consultant** who prepares it. Local governments should clearly specify the appropriate qualifications of consultants suitable to undertake this type of work.

Legislative References

67. [*Municipal Act* Sec. 741.8]

Special Purpose

Heritage inspection

What is it?

Heritage inspection allows local government to inspect a heritage property that is:

- on a **community heritage registry**
- a property that meets the criteria for identification of heritage properties established in an **official community plan**
- **designated**
- within a **development permit area**
- under **temporary protection** measure
- subject of a **heritage impact assessment**
- provincially protected under the *Heritage Conservation Act*

Heritage inspection requires an **order** to be issued by local government.

Purpose

A **heritage inspection** allows local government an opportunity to **assess a property** for such reasons as determining its heritage value, its condition, or its need for protection.

Proposed Legislation	Previous Legislation
■ *Local governments may order a heritage inspection*	■ *Only the Minister permitted to order heritage inspection (referred to as `site investigations')*

Process

1 Local government orders a **heritage inspection** on a heritage property.

2 The order must specify the **purpose** of the inspection and must be carried out within 30 days. The order may require that the property be preserved until the inspection takes place and may include other terms and conditions which the local government considers appropriate.

3 The *Heritage Conservation Act* allows that where entry is denied, a local government may apply to a Justice for a **warrant** to authorize a heritage inspection.

4 A **report** outlining the findings of the inspection is submitted to a meeting of the local government at which time the inspection is deemed to be complete.

Considerations

- Because heritage inspection **requires access** to private property, every effort should be made to accommodate and to alleviate the concerns of the property owner.
- Inspection of an **interior** of a private residence requires a **warrant** issued by a Justice.

Legislative References

67. [*Municipal Act* Sec. 741.6]
21. [*Heritage Conservation Act* Sec. 21]

Special Purpose

Heritage site maintenance standards

What is it?

Heritage site maintenance standards establish **minimum requirements** for the **care and maintenance** of heritage buildings, structures or lands that are designated or are subject to a development permit. Different maintenance standards may be established for different areas or types of protected properties within a community.

Purpose

The purposes of **heritage site maintenance standards** are to:

1) communicate to property owners the **expectations** of the local government regarding the maintenance of protected properties.
2) ensure that protected sites are **not allowed to deteriorate** through neglect.

Proposed Legislation	Previous Legislation
■ *Provides for the **establishment** and **enforcement** of heritage site maintenance standards*	■ *No provision for maintenance standards*

Process

1 Local government **identifies** the properties that will be the subject of heritage site maintenance standards.

2 Local government **drafts** heritage site maintenance standards.

3 Local government **adopts** (by bylaw) heritage site maintenance standards and communicates expectations to the affected property owners.

4 Local government **monitors** protected properties and, if necessary, **enforces** standards.

Considerations

- The introduction of **maintenance standards** is a step that is quite appropriate where property owners have received significant **financial support** towards conservation.
- Local governments should 1) prepare **clear and detailed** maintenance standards, and 2) ensure that all affected property owners are **aware** of the maintenance standards.
- A heritage inspection may be ordered to **verify that standards** are being met.
- Legal **enforcement** of the heritage maintenance standards should be considered **only** after all other efforts of negotiation have failed.
- Enforcement provisions for maintenance standards include application by local governments to the Supreme Court to order that a property be brought up to the standards. In extreme cases, local government may make application for an **emergency order** to undertake maintenance work at the property owner's expense.

Legislative references

67. [*Municipal Act* Sec. 741.96]

Special Purpose

Review process

What is it?

The **review process** allows for property owners who feel aggrieved by the actions of a local government (with respect to the heritage provisions of the *Municipal Act)* to request a **review of the actions and decisions** of the local government.

Specifically, the **review process** refers to the mediation or investigative activities carried out by the **Provincial Ombudsman.**

Purpose

The purpose of the **review process** is to provide a recourse for private property owners who believe they have been treated unfairly or illegally with respect to:

- designation
- temporary heritage protection measures
- heritage impact assessment
- heritage inspection
- heritage maintenance standards

Proposed Legislation	Previous Legislation
■ *Reconsideration by council or regional board of* ***decisions by delegates***	■ *No recourse except through the courts*
■ *Mediation / review process through the* ***Ombudsman's office***	
■ *Right to appeal to* ***courts*** *continued*	

Process

1 Owner, believing himself/herself aggrieved by local government heritage decision, files a complaint with the **Ombudsman's office.**

2 **Ombudsman receives** the **application** and appoints a person to mediate the dispute or denies the application.

3 Where mediation is not successful, the Ombudsman investigates the circumstances and **reports** his/her conclusions and recommendations to both parties.

4 Local government considers the report and takes such **action** as it deems appropriate.

5 When the Ombudsman's report provides recommendations to local government and no corrective action is taken, the Ombudsman may submit the report to Cabinet to seek an order that is binding on the local government.

Considerations

- The recommendations included in a report prepared under the *Ombudsman Act* are **non-binding** on the parties involved.
- The Ombudsman will NOT review decisions where an appeal to council exists (i.e. delegated authority). Also, the Ombudsman will NOT review an issue arising out of compensation related to designation.

Legislative References

67. [*Municipal Act* Sec. 741.99 and 741.2] existing [*Ombudsman's Act*]

Special Purpose

Injunctions, remedies and penalties

What is it?

Injunctions are court orders requiring individuals to refrain from specific activities that would result in unlawful alteration of heritage property.

Civil remedies are **corrective actions** that may be ordered by the Supreme Court against individuals who unlawfully alter heritage property protected by:

- designation
- temporary heritage protection measures
- provincial *Heritage Conservation Act*
- heritage inspection

Civil remedies include restoration of a heritage property to its **pre-alteration condition** and other court ordered compensatory measures.

Penalties are **fines and/or imprisonment** ordered by the Supreme Court for offenses that unlawfully altered protected heritage property.

Purpose

Civil injunctions, remedies and penalties are intended to **discourage and deter** individuals from unlawfully altering protected heritage property and to provide for appropriate punishment and compensatory actions related to illegal acts.

Proposed Legislation	Previous Legislation
■ ***Injunctions** available to protect heritage property*	■ *Not available*
■ *Broader range of **remedies** available; court process to protect owners rights*	■ *Existing provisions for remedies inadequate, while providing little protection for the rights of property owners*
■ *Significantly increased **penalties**, including fines and imprisonment*	■ *Limited penalties available under the **Offence Act***

Process

Process will vary depending on specifics of the case. Local government should seek legal advice.

Considerations

- The substantially increased penalties should act as a **deterrent** to unlawful action.
- Where an illegal action is anticipated, it may be preferable to seek an **injunction** blocking the threat rather than punishing the offender after the fact.
- Should a local government find it necessary to use the penalty provisions, **court action** will be required. This action should be considered only after all possible alternatives have been exhausted.

Legislative References

69. [***Municipal Act*** **Sec. 750.2]**
68. [***Municipal Act*** **Sec. 750.1]**

Special Purpose

Acquisition and expropriation

What is it?

Acquisition is the ability of local government to obtain heritage property by means of a gift or direct purchase.

Expropriation is a **last resort mechanism** used by local government to conserve a heritage property by **forced purchase**.

Purpose

Acquisition allows for the **direct conservation of a heritage property** by local government.

Expropriation is expected to be used ONLY in exceptional, extraordinary and limited cases where a very significant resource is threatened and all other possible options or agreements to provide for protection/ conservation have failed (such as designation, development permits, heritage revitalization agreements and support tools).

Proposed Legislation	Previous Legislation
■ *Identifies heritage conservation as a "public purpose" hereby enabling **expropriation** to be used for conservation of heritage property by council or regional board*	■ *Expropriation not authorized for heritage conservation*

Process

1 Heritage resource is **identified,** usually in an inventory.

2 **Options** for conservation are explored by local government and property owner (i.e. designation, development permits, enforcement of maintenance standards, voluntary acquisition by gift or sale, etc.)

3 If voluntary acquisition is possible, the local government offers and **negotiates an agreement** with the property owner for sale or gift. Payment or transaction is completed, and the land title is transferred.

4 If agreement on voluntary acquisition on a very significant heritage property cannot be reached and the property is threatened, expropriation should be considered **as a last resort**.

5 A local government must **pass a bylaw** to expropriate a property.

6 For expropriation of property, local government follows detailed procedures outlined in the **British Columbia Expropriation Act:*

a) Property value is **assessed**

b) Property owner is **notified** of intent to expropriate. If appeals and negotiations fail, local government adopts an expropriation bylaw and puts money equalling value of property in trust

c) Title of land is **transferred** by Land Titles office

d) Owner receives money

* This is only a general outline of the expropriation process - see the *British Columbia Expropriation Act* for detailed process

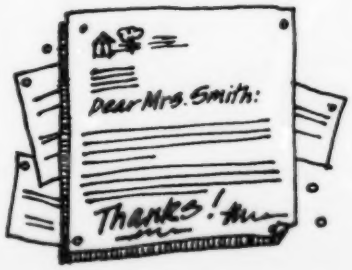
Considerations

■ Although local governments may choose to acquire property by way of **gift** or **purchase,** consider expropriation as a tool of **last resort!**

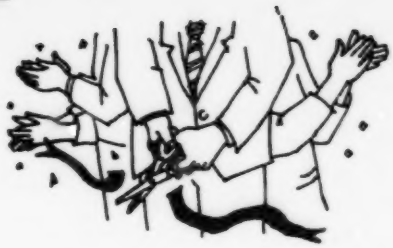
■ Expropriation provides for full and fair compensation through the provisions of the *Expropriation Act.* The expropriation process is complex, expensive and often controversial. This tool should only be used after much consideration.

Legislative references

57. [*Municipal Act* Sec. 530.1]
58. [*Municipal Act* Sec. 531]
61. [*Municipal Act* Sec. 570]
existing [*Expropriation Act*]



Present



There are three steps to successful community heritage conservation programs: **plan, conserve,** and **present.** Presenting a community's heritage is a way of promoting heritage to the community through public awareness, interpretation and recognition initiatives. Presenting heritage is an important step for most communities as it informs and involves the communities in its conservation activities.

The following ideas are just a few to get you started thinking about how you can present your community's heritage.

Organization

In order for a community to achieve its heritage planning, conservation and presentation goals it needs to be **organized.** Communities which have agreed on a vision and have coordinated the efforts of their local government, business community and local heritage organizations are well on their way to achieving their conservation objectives.

Organization and coordination are key to a community being able to "present" its heritage effectively. Integral to effective communication, is an active heritage organization.

Communities may consider forming a **non-profit society** (or sometimes called a "foundation") to spearhead their heritage activities. The local government may also wish to create a **community heritage commission** to oversee heritage activities. With a society, or commission (or both), the community will benefit from an active group of people who are committed to presenting heritage to the community.

For more information on getting your community organized, contact the British Columbia Heritage Trust and ask about the "Let's Get Organized! Workshop" conducted by the B.C. Community Pride Program (387-5133).

Public Awareness

Understanding heritage requires that different views and values are talked about openly. Communities that have an active public awareness program benefit tremendously from their on-going efforts. There are two components to public awareness: marketing and promotion.

1) **Marketing** refers to identifying, enhancing, promoting and delivering heritage in a way that meets **community wants and needs.** A community can tailor its "heritage product" to suit the community. This can be done by developing special programs for school children or seniors or by enhancing heritage buildings through restoration or special lighting projects. The key to marketing is to identify who you want to get the message to and to develop the best way to convey the message.

2) **Promotion** is communicating information about the community's heritage to the public. This can be done by:

- advertising special heritage events
- giving tours through a downtown
- producing a walking tour brochure
- attracting press coverage

No matter how you do it, get the message out that your community's heritage is alive and thriving!

For more information on promoting your community's heritage, contact the British Columbia Heritage Trust (356-1433) to ask for their brochures called "Celebrating Heritage" and "90 Ideas for the 90's," or call the B.C. Community Pride Program to request a technical workshop on marketing.

Interpretation

Interpretation is **communicating the story** of a community's heritage. It is a way to tell people where the community has come from and where it is going to.

There are many ways to interpret heritage including:

- walking tour brochures
- special interpretive centres
- audio-visual displays
- guided tours
- special education programs

Each community should assess its own **special** or **unique qualities** and develop an interpretive program that reflects that uniqueness.

Interpretation helps communities to gain the real value of heritage conservation by helping people to understand and to know their community better.

Recognition

Recognition is **"giving credit where credit is due"** that rewards individuals and groups for their contribution to

conserving their community's heritage. Communities should develop a regular program to recognize these special contributions.

Saying thank you needn't be expensive. Consider a program which gives heritage awards of:

- certificates
- plaques
- special press stories
- trophies
- commemoratives

Organization, public awareness, interpretation and recognition are all part of presenting a community's heritage. It is an important step in developing a community heritage conservation program.

Present your heritage with pride!